



Request for Proposals

Experience of Care Surveys for Maryland **Nursing Homes**

SOLICITATION NO.
MHCC 12 - 006

Issue Date: October 24, 2011

Minority Business Enterprises are Encouraged to Respond to this Solicitation

NOTICE

Prospective Offerors who have received this document from the Department of Health and Mental Hygiene's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

STATE OF MARYLAND
NOTICE TO OFFERORS/CONTRACTORS

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to respond on this Contract, please fax this completed form to: 410-358-1236 to the attention of the Procurement Officer.

Title: Experience of Care Surveys for Maryland Nursing Homes
Solicitation No: MHCC 12-006

1. If you have responded with a "no response", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we ordinarily provide.
- ☐ We are inexperienced in the work/commodities required.
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the bid/proposals is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE requirements. (Explain in REMARKS section.)
- ☐ Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: _____

2. If you wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

Offeror Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

**STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
KEY INFORMATION SUMMARY SHEET**

Request For Proposals:	Experience of Care Surveys for Maryland Nursing Homes
Solicitation Number:	MHCC 12-006
Issue Date:	October 24, 2011
RFP Issuing Office:	Maryland Health Care Commission
Procurement Officer:	Sharon M. Wiggins Office Phone: (410) 764-3329 Fax: (410) 358-1236 e-mail: swiggins@mhcc.state.md.us
Proposals are to be sent to:	Maryland Health Care Commission 4160 Patterson Avenue Baltimore, MD 21215 Attention: Sharon Wiggins
Pre-Proposal Conference:	November 1, 2011 @ 10 AM, Local Time 4160 Patterson Avenue Baltimore, Maryland 21215
Closing Date and Time:	December 1, 2011 @ 4:00 PM Local Time
MBE Subcontracting Goal:	25 %

Table of Contents

SECTION 1 - GENERAL INFORMATION.....	1
1.1 SUMMARY STATEMENT	1
1.2 ABBREVIATIONS AND DEFINITIONS.....	1
1.3 CONTRACT TYPE.....	2
1.4 CONTRACT DURATION.....	2
1.5 PROCUREMENT OFFICER.....	3
1.6 CONTRACT MONITOR	3
1.7 PRE-PROPOSAL CONFERENCE.....	3
1.8 eMARYLANDMARKETPLACE	4
1.9 QUESTIONS	4
1.10 PROPOSALS DUE - DATE AND TIME.....	4
1.11 DURATION OF OFFER	4
1.12 REVISIONS TO THE RFP	5
1.13 CANCELLATIONS; DISCUSSIONS	5
1.14 ORAL PRESENTATION	5
1.15 INCURRED EXPENSES.....	5
1.16 ECONOMY OF PREPARATION.....	5
1.17 PROTESTS/DISPUTES	5
1.18 MULTIPLE OR ALTERNATE PROPOSALS.....	6
1.19 ACCESS TO PUBLIC INFORMATION ACT NOTICE	6
1.20 OFFEROR RESPONSIBILITIES	6
1.21 STANDARD CONTRACT	6
1.22 PROPOSAL AFFIDAVIT.....	6
1.23 CONTRACT AFFIDAVIT.....	6
1.24 MINORITY BUSINESS ENTERPRISES	7
1.25 ARREARAGES	8
1.26 PROCUREMENT METHOD	8
1.27 VERIFICATION OF REGISTRATION AND TAX PAYMENT	8
1.28 FALSE STATEMENTS	8
1.29 PAYMENTS BY ELECTRONIC FUNDS TRANSFER	8
1.30 LIVING WAGE REQUIREMENTS.....	9
1.31 PROMPT PAYMENT POLICY.....	9
1.32 CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE	9
1.33 ELECTRONIC PROCUREMENT TRANSACTION	10
SECTION 2 – OFFEROR MINIMUM QUALIFICATIONS	12
SECTION 3 – SCOPE OF WORK	13
3.1 PURPOSE	13
3.2 SCOPE OF WORK - REQUIREMENTS.....	13
3.3 KEY DELIVERABLES FOR NURSING HOME SURVEYS SCOPE OF WORK.....	24
3.4 SUBCONTRACTORS	25
3.5 SECURITY REQUIREMENTS	25
3.6 MBE REPORTS.....	26
3.7 INVOICING AND PAYMENT TYPE	26
3.9 INSURANCE REQUIREMENT.....	30
3.9 PROBLEM ESCALATION PROCEDURE	31
SECTION 4 – PROPOSAL FORMAT	33

4.1	TWO PART SUBMISSION.....	33
4.2	PROPOSALS	33
4.3	DELIVERY	33
4.4	VOLUME I – TECHNICAL PROPOSAL	34
4.5	VOLUME II - FINANCIAL PROPOSAL	39
SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE		40
5.1	EVALUATION CRITERIA	40
5.2	TECHNICAL CRITERIA	40
5.3	FINANCIAL CRITERIA	42
5.4	RECIPROCAL PREFERENCE.....	42
5.5	SELECTION PROCEDURES.....	42
SECTION 6 - ATTACHMENTS.....		44
ATTACHMENT A – STANDARD CONTRACT		46
ATTACHMENT B – BID/PROPOSAL AFFIDAVIT.....		60
ATTACHMENT C - CONTRACT AFFIDAVIT.....		65
ATTACHMENT D – MINORITY BUSINESS ENTERPRISE GOAL AND FORMS		68
MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE.....		75
ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM		78
ATTACHMENT F – FINANCIAL PROPOSAL FORM, INSTRUCTIONS AND WORKSHEETS		79
ATTACHMENT F (1) - FINANCIAL PROPOSAL WORKSHEET 1		81
ATTACHMENT F (2) - FINANCIAL PROPOSAL WORKSHEET 2		82
ATTACHMENT F (3) - FINANCIAL PROPOSAL WORKSHEET 3 - RATES BY LABOR CATEGORY		83
ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS		85
ATTACHMENT G (1) - MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT		87
ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE.....		89
ATTACHMENT I – BUSINESS ASSOCIATE AGREEMENT		90
ATTACHMENT I-1 - BREACH OF UNSECURED PROTECTED HEALTH INFORMATION		97
ATTACHMENT J (1) - NON-DISCLOSURE AGREEMENT (SOLICITATION)		98
ATTACHMENT J (2) – NON-DISCLOSURE AGREEMENT (AWARD)		104
ATTACHMENT K - MHCC DATA USE AGREEMENT		108
ATTACHMENT L - FILE LAYOUT FOR SURVEY RESULTS – FACILITY-SPECIFIC RESULTS		110

SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

1.1.1 The Maryland Health Care Commission (MHCC) is issuing this Request for Proposals to secure a contractor to implement two (2) annual surveys to assess the experience of care from individuals and/or the family members/responsible parties of residents using Maryland nursing home services.

Under the provisions of Health-General Article §19-135(d), the Commission, is required to: “develop and implement a system to comparatively evaluate the quality of care and performance of nursing facilities on an objective basis”, and annually publish the summary findings of the evaluation.

1.1.2 It is the MHCC's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offeror and the MHCC.

1.1.3 The MHCC intends to make **a single award** to the Offeror whose proposal is deemed to be the most advantageous to the State.

1.1.4 Offerors, either directly or through their sub-contractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation.

1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

- a. **AHRQ** - Agency for Healthcare Research and Quality, a federal agency
- b. **CAHPS®** – Consumer Assessment of Healthcare Providers and Systems
- c. **CMS** - Centers for Medicare and Medicaid Services, a federal agency
- d. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us
- e. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of Attachment A.
- f. **Contract Monitor (CM)** – The State representative for this project that is primarily responsible for contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the contract, and in achieving on budget/on time/on target (e.g., within scope) completion of the project.
- g. **Contractor** – The selected Offeror that is awarded a Contract by the State.
- h. **DBM**- Maryland Department of Budget Management, a Maryland State Agency
- i. **DHMH** – Maryland Department of Health and Mental Hygiene.
- j. **DUA** – Data Use Agreement
- k. **LTC** – Long Term Care

- l. **Long Term Care Service** – a service or support that helps individuals who are aging or have disabilities and need assistance with activities of daily living (ADL's), have health care needs, or need help with activities that help them maintain their independence such as shopping, taking medications, managing money, and doing activities outside the home. LTC services are provided in institutions such as nursing homes, or in the individual's home or community.
- m. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.
- n. **MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- o. **MHCC** – Maryland Health Care Commission.
- p. **LAN** – Local Area Network.
- q. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov - keyword State Holidays.
- r. **Notice to Proceed** – Letter from Contract Monitor to contractor stating the date the contractor can begin work subject to the conditions of the contract.
- s. **Offeror** – An entity that submits a proposal in response to this RFP.
- t. **OHCQ** - Office of Health Care Quality, the Maryland state agency within the Department of Health and Mental Hygiene charged with monitoring the quality of care in Maryland's 8,000 health care and community programs.
- u. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative that can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- v. **Request for Proposals (RFP)** – This Request for Proposals issued by the Maryland Department of Health and Mental Hygiene, Maryland Health Care Commission, **Solicitation Number MHCC 12-006 dated October 24, 2011, including any amendments.**
- w. **SAS®** – Statistical Analysis Software
- x. **SOCY** – Start of Contract Year
- y. **SQL** - Structured Query Language - a database computer language designed for the retrieval and management of data in relational database systems
- z. **State** – “State” means the State of Maryland.
- aa. **WAN** – Wide Area Network.

1.3 Contract Type

The Contract that results from this RFP shall be a combination Firm Fixed Price as described in COMAR 21.06.03.02.A(1) with respect to the fixed work component, and an Indefinite Quantity Contract with Firm Fixed unit prices as defined at COMAR 21.06.03.02 & 21.06.03.06.A.(2) with respect to the unit work.

1.4 Contract Duration

The Contract resulting from this RFP shall be for a period of four years beginning on or about January 1, 2012 and ending December 31, 2015. The Contractor shall provide services upon receipt of a Notice to Proceed.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Sharon M. Wiggins
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215
Phone Number: 410-764-3329
Fax Number: 410-358-8811
E-mail: swiggins@mhcc.State.md.us

MHCC may change the Procurement Officer at any time by written notice.

1.6 Contract Monitor

The Contract Monitor is:

Carol Christmyer
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215
Phone Number: 410-764-3575
Fax Number: 410-358-8811
Email: cchristmyer@mhcc.state.md.us

MHCC may change the Contract Monitor at any time by written notice.

1.7 Pre-Proposal Conference

A pre-proposal conference (Conference) will be held on November 1, 2011, beginning at 10:00 AM, at 4160 Patterson Avenue, Baltimore, MD 21215. Attendance at the pre-proposal conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better preparation of their proposals.

The Pre-Proposal Conference will be summarized. As promptly as is feasible subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please e-mail, mail, or fax at (410) 358-8811 the Pre-Proposal Conference Response Form to the attention of the Procurement Officer with such notice no later than 4:00 PM on October 28, 2011. The Pre-Proposal Conference Response Form is included as Attachment E to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call no later than October 28, 2011. MHCC will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

Each Offeror must indicate their eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of their Technical Proposal submission to this RFP.

eMM is an electronic commerce portal administered by the Maryland Department of General Services. In addition to using the DHMH web site <http://www.dhmdh.md.gov/procumnt/procopps.html> and possibly other means of transmission, the RFP, associated materials, summary of the pre-proposal conference, Offeror questions and Department responses, addenda, and other solicitation related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://ebidmarketplace.com/> and click on "Registration" to begin the process then follow the prompts.

1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted to the Procurement Officer in a timely manner prior to the proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the RFP.

1.10 Proposals Due - Date and Time

An unbound original and five bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in sub-section 1.5, no later than 4:00 p.m. Local Time on December 1, 2011 in order to be considered. An electronic version (CD) of the Technical Proposal in pdf. format must be enclosed with the original technical proposal. An electronic version (CD) of the Financial Proposal in pdf. format must be enclosed with the original financial proposal. Ensure that the CDs are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial). (See Section 4.2 Proposals)

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02, proposals received by the Procurement Officer after the due date, December 1, 2011 at 4:00 PM Local Time will not be considered.

Proposals may not be submitted by e-mail or facsimile.

1.11 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.12 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on <http://mhcc.maryland.gov/procurement/index.html>, DHMH Current Procurements web page <http://dhmh.maryland.gov/procumnt/procopps.html> and through eMarylandMarketplace <https://ebidmarketplace.com/>. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

1.13 Cancellations; Discussions

The MHCC reserves the right to cancel this RFP, accept or reject any and all proposals (in whole or in part) received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the MHCC. The MHCC also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

1.14 Oral Presentation

Offerors may be required to make oral presentations to MHCC representatives. Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations. Typically, oral presentations occur approximately two weeks after the proposal due date.

1.15 Incurred Expenses

The MHCC will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this solicitation.

1.16 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror's proposals to meet the requirements of this RFP.

1.17 Protests/Disputes

Any protest or dispute related respectively to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

1.18 Multiple or Alternate Proposals

Multiple proposals or alternate proposals **will not** be accepted.

1.19 Access to Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6. (See Section 4.4.3.2 Claim of Confidentiality) This confidential and/or proprietary information should be identified by page and section number and placed after Title Page and before the Table of Contents.

1.20 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposal. Additional information regarding MBE subcontractors is provided under paragraph 1.24. If an Offeror that seeks to perform or provide the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as, but not limited to, references and financial reports shall pertain exclusively to the Offeror unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.21 Standard Contract

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract, attached as **Attachment A**. Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal. A proposal that takes exception to these terms may be rejected.

1.22 Proposal Affidavit

A proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment B** of this RFP.

1.23 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five business days of notification of proposed Contract award, however, to speed processing the Offeror is urged to include it with the Technical Proposal.

1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of **25%** has been established for the services resulting from this contract.

1.24.1 Attachment D – Minority Business Enterprise Participation, Instructions and Forms are provided to assist the Contractor. The anticipated Contractor must include with its Contract a completed *Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1)* whereby:

- (a) The Contractor acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly; and,
- (b) The Contractor responds to the expected degree of Minority Business Enterprise participation stated in the Contract, by identifying the specific commitment of certified MBEs at the time of submission. The Contractor shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

If the Contractor fails to submit a completed Attachment D-1 with the Contract as required, the Procurement Officer shall deem the Contractor not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

1.24.2 If the Contractor believes a waiver (in whole or in part) of the overall MBE goal, or of any sub goal, is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11 within 10 days from notification that it is the Contractor.

1.24.3 Within 10 working days from notification that it is the Contractor or from the date of the actual award, whichever is earlier, the Contractor/Contractor must provide the following documentation to the Contract Monitor.

- (a) Outreach Efforts Compliance Statement (Attachment D2)
- (b) Subcontractor Project Participation Statement (Attachment D3)
- (c) Any other documentation required by the Procurement Officer to ascertain responsibility in connection with the certified MBE participation goal.

If the Contractor fails to return each completed document within the required time, the Procurement Officer may determine that the Contractor is not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

1.24.4 A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive Maryland 21076. The phone number is 410-865-1269. The directory is also available on the Web at <http://www.mdot.state.md.us>. The most current and up-to-date information on Minority Business Enterprises is available via this website.

1.24.5 The Contractor once awarded a contract will be responsible for submitting, or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:

- (a) D-4 (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report)
- (b) D-5 (MBE Subcontractor/Contractor Unpaid MBE Invoice Report)

1.25 Arrearages

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become in arrears during the term of the Contract if selected for Contract award.

1.26 Procurement Method

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

1.27 Verification of Registration and Tax Payment

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation.

Address: State Office Building, Room 803
301 West Preston Street
Baltimore, Maryland 21201

Web Address: <http://www.dat.state.md.us/sdatweb/datanote.html>

It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

1.28 False Statements

Offerors are advised that the Md. Code Ann., State Finance and Procurement Article, §11-205.1 provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - Falsify, conceal, or suppress a material fact by any scheme or device;
 - Make a false or fraudulent statement or representation of a material fact; or
 - Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.29 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form can be downloaded at: <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>>

1.30 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to the Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's Living Wage requirement is contained in **Attachment G** entitled *Living Wage Requirements for Service Contracts*. If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least (see amounts at <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>) per hour. The contract resulting from this solicitation will be deemed to be a Tier 1 contract or a Tier 2 contract depending on the location(s) from which the Contractor provides 50% or more of the services. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the contract will be a Tier 1 contract. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the contract will be a Tier 2 contract.

The Tier 1 Area includes Montgomery, Prince George's Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located. The Offeror must identify in their Offer the location(s) from which services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage.

1.31 Prompt Payment Policy

This procurement and the contracts to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3 and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror must comply with the prompt payment requirements as outlined in sub-section 31 of the contract resulting from this solicitation (see Attachment A). Additional information is available on the GOMA website at: http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf

1.32 Conflict of Interest Affidavit and Disclosure

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as **Attachment H** Conflict of Interest Affidavit and Disclosure. For

policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.33 Electronic Procurement Transaction

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, DBM may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of the Contract which are specifically authorized under the RFP or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g. §1.26 related to payments by electronic file transfer) and subject to the exclusions noted in subsection E of this section, the following transactions are authorized to be conducted by electronic means on the terms described:
 - 1. The Procurement Officer may conduct the procurement using eMarylandMarketplace, e-mail or facsimile to issue:
 - (i) the solicitation (e.g. the RFP);
 - (ii) any amendments;
 - (iii) pre-proposal conference documents;
 - (iv) questions and responses;
 - (v) communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
 - (vi) notices of award selection or non-selection; and
 - (vii) the Procurement Officer's decision on any protest or Contract claim.
 - 2. An Offeror or potential Offeror may use e-mail or facsimile to:
 - (i) ask questions regarding the solicitation;
 - (ii) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (iii) request a debriefing; or,
 - (iv) submit a "No Bid Response" to the solicitation.

3. The Procurement Officer, the State's Contract Manager and the Contractor may conduct day-to-day Contract administration, in accordance with the limitations of section E of this subsection, utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.

- E. The following transactions related to this procurement and any Contract awarded pursuant to it are not authorized to be conducted by electronic means:
1. submission of initial bids or proposals;
 2. filing of protests;
 3. filing of contract claims;
 4. submission of documents determined by DBM to require original signatures (e.g. Contract execution, Contract modifications, etc); or
 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.
- F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RFP, the Contract, or in the direction from the Procurement Officer or Contract Manager.

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SECTION 2 – OFFEROR MINIMUM QUALIFICATIONS

Offerors must clearly state and demonstrate that they satisfy the stated experience qualification and provide evidence thereof. The primary evidence shall be in the form of a self-certification stated in the Executive Summary of the Technical Proposal.

- The Offeror organization must demonstrate a minimum of five (5) years recent experience administering consumer surveys and healthcare consulting services
- The project manager must demonstrate a minimum of five (5) years recent experience conducting consumer surveys and healthcare consulting services

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SECTION 3 – SCOPE OF WORK

3.1 Purpose

3.1.1 The MHCC is issuing this solicitation for the purposes outlined in sub-section 1.1 of this RFP. Under the provisions of Health-General Article §19-135(d), the Commission is required to: “develop and implement a system to comparatively evaluate the quality of care and performance of nursing facilities on an objective basis”, and annually publish the summary findings of the evaluation. The survey processes to be implemented under the Contract that results from this solicitation will collect information about the experience of care from families/responsible parties and nursing home residents.

3.1.2 Background

A 2004 study conducted for the MHCC provided an overview of nursing home satisfaction literature and recommendations for implementing collection and public report of satisfaction with nursing home care (“Maryland Nursing Home Consumer Satisfaction - Recommendations Report” March 2004). In the fall of 2005, the MHCC selected a survey instrument and Contractor to pilot a nursing home family experience of care survey (<http://mhcc.maryland.gov/longtermcare/index.html#nhp>). Following this successful pilot, family experience of care surveys for long stay residents (having a stay of 90 days or longer) were conducted in 2007 and 2008. In 2009, the scope of the survey process was expanded to include discharged residents of nursing homes with a short stay (less than 90 days) using a survey instrument developed by the Agency of Healthcare Research and Quality (AHRQ) Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Team.

3.2 Scope of Work - Requirements

The MHCC plans to authorize two nursing home surveys each year; one survey to collect family/responsible party experience of care of long stay residents and the other to collect experience of care from recently discharged residents with a short stay in the nursing home. These surveys are expected to occur annually beginning either in calendar year 2011 or 2012 at the MHCC’s discretion. The MHCC will unilaterally determine whether or not to authorize either of the above named surveys for any given year and payment will only be made to the Contractor for a survey authorized by MHCC. The MHCC is in no way pledging to authorize a minimum or maximum number of survey(s).

3.2.1 Overview of Services to Be Performed

The Contractor shall perform tasks that can be categorized under four major headings. The first category, pre-survey activities, includes tasks such as acquiring lists of current residents, recently discharged residents, and responsible parties from nursing homes; communicating regarding the survey(s) with providers of LTC services, determining and selecting a sample, and formatting and printing the survey. The second category, survey administration, includes distributing the survey to the selected sample; tracking survey responses; implementing a follow-up strategy with survey recipients to maximize response; and responding to questions from survey recipients or from the nursing home personnel. The third category is analysis of responses. The fourth category is production and distribution of annual reports which will include reports for each nursing home; statewide and aggregate reports; and methodological reports.

When both surveys are to be conducted in the same year, the Contractor shall conduct the two nursing home surveys concurrently to maximize resources and produce reports for simultaneous

release. The Contractor's work effort may also include periodic meetings with stakeholder groups, the MHCC, or other meetings as directed by the Contract Monitor.

Note: Table A identifies the estimated number of facilities in Maryland offering nursing home services; the type and estimated number of recipients for each survey (estimated sample), and other information relevant to survey methods. This table is provided for use in preparing the price proposal and is not intended to be definitive of the number of facilities or sample sizes of actual surveys. The Contractor, in consultation with the MHCC, shall determine the actual number of nursing homes and survey sample at the beginning of each survey cycle. For the purposes of submitting a financial proposal, the offeror should assume some increase in sample size in the latter years of the contract. Please state your assumptions used for the increasing sample size.

Table A

Type of LTC Survey	Estimated # of Agencies	Survey Respondents	Estimated Sample	Criteria For Inclusion	Proposed Exclusions
Nursing Home Family Survey	225	Responsible parties/family members who visit the resident	18,000	Resident was in the nursing home within the last six months	Responsible parties who are residents of a nursing facility or with an address of a nursing facility
Nursing Home Resident Survey	60-80	Recently discharged residents	6,500-10,500	Residents with stays of 5-90 days discharged within the last three months	Residents discharged from the nursing home to another health care facility

3.2.2 Pre Survey Activities

Within 15 days following contract award, the Contractor shall meet with the MHCC to finalize the project work plan for authorized surveys, to be conducted in the first contract year (if necessary). This work plan shall include the following:

The Offeror's response to this solicitation shall include a detailed work plan with a project management flow chart (for example, Microsoft Project) that contains information concerning:

- Each major step of the project with specific tasks and dates for completion;
- Name and position title of each staff member responsible for each specific task, and the number of hours assigned to each staff member to complete each task; and
- Inputs and resources needed for the project.

If the MHCC authorizes surveys in any year of the Contract period, the Contractor shall update the work plan described in this section and submit it to the MHCC for approval within 10 calendar days after the commencement date of each contract year. The work plan update will reflect information specific to the survey(s) authorized by the MHCC for the applicable year.

- 3.2.2.2 The Contractor shall finalize and implement a communication plan to obtain from Maryland nursing homes information needed to obtain a list of responsible parties or individuals using the services and to facilitate survey activities.

Effective communication with each nursing home is a critical factor in the success of survey administration because of the importance of enlisting the cooperation and assistance of agency staff in identifying potential respondents and in using the results of the survey to improve care. The Offeror shall submit a communication plan, in response to this RFP, which includes the following elements:

- a. a methodology for determining an appropriate contact person for each Maryland nursing home who can provide information from which a list of responsible parties or users of services can be derived; and,
- b. a methodology for communicating with each nursing home throughout the survey period to respond to questions concerning the survey and following the data collection period to describe how staff can use survey results.

This plan shall address the title or position of the agency contact person, the format and content of the communication, and the time frame for executing the communication plan. All written communications prepared by the Contractor shall be approved by the MHCC prior to distribution to any nursing home.

The Contractor shall submit to MHCC an update to the communication plan for each year that the MHCC authorizes a survey.

3.2.3 Format the Survey Questions and Mailing Materials

The MHCC will provide to the Contractor a unique set of survey questions and response choices for each survey to be conducted in an electronic file. The Contractor shall:

- a. Format the questions and response choices in the sequence supplied by MHCC into a document suitable for distribution to each survey participant. The format shall be developed to ensure that survey participants will be able to respond accurately and in an efficient manner. The Contractor shall format the survey response document to be returnable to the Contractor for tabulation of results.

Note: In preparing an offer, an Offeror shall assume that each survey document will be limited to the number of questions that can be answered in a reasonable period of time (i.e. 20 minutes or less) and will include the following rating areas as applicable: 1) staff/administrative aspects such as communication, timeliness of response; 2) environment/physical aspects of the facility; 3) food & meals; 4) resident rights/autonomy/privacy; 5) care provided, such as clinical aspects: pain, specific therapy, medications; and, 6) overall experience. In addition, questions about the resident, respondent, and a limited number of demographic questions will be included.

- b. Prepare for distribution written correspondence, subject to the prior approval by the MHCC, to be sent to prospective respondents soliciting their participation and explaining information necessary for completion of the survey. The MHCC will provide a letter from the executive director or designee requesting the participation of potential respondents for inclusion with the mailed survey materials.
- c. Duplicate the final survey, prepare the survey for distribution and mail to the sample as specified in Survey Methodology. Materials mailed to survey participants shall include a postage paid return envelope.

When the MHCC authorizes a survey in any year of the Contract period, the Offeror should be aware that the survey questions supplied may differ from the base year.

3.2.4 Determine Sample Size, Methods for Sample Selection, Survey Methodology

In determining the size of the sample population to be used for each authorized survey conducted, the Offeror should be aware that the goal of the MHCC is to obtain at least a 50% response rate for each facility surveyed. The sample selection and survey methodology shall be designed to maximize the desired response rate in the most cost-effective and efficient manner possible.

- a. Using the list provided by the nursing homes, the Contractor shall determine an appropriate sample size and confirm, for approval by the MHCC, eligible participants to be surveyed. Examples of inclusion and exclusion criteria for each survey are identified in Table A, above. Annually the Contractor shall validate the criteria for inclusion and exclusion of survey participants for each survey through a brief review of established survey methods, prior experience, or literature based references. If criteria other than those named in Table A are identified for inclusion or exclusion, the Contractor shall provide to MHCC rationale for the inclusion or exclusion of that category and a description of how the sample selection methodology will identify survey participants. Sample stratification may differ for each survey, but at a minimum is expected to include payer source. The Contractor shall select a final sample according to the sampling methodology approved by the MHCC.
- b. The survey methodology shall address the manner in which the minimum 50% response rate will be achieved. A mixed mode survey methodology is preferred, consisting of at least two mail waves, a post card reminder, and a phone follow-up. The follow-up strategy shall be employed for any facility not achieving a minimum 50% return rate through the initial mail waves.
- c. Annually the Contractor shall submit a written evaluation of follow-up strategy effectiveness to the MHCC at the conclusion of data analyses. The follow-up strategy may change as a result of the evaluation of follow-up effectiveness.
- d. The Offeror may propose alternative follow-up strategy. When proposing alternative survey follow-up, the Offeror shall: 1) justify the proposed strategy by prior experience, and/or by literature-based references or some other reasonable justification; 2) submit a cost comparison of the Offeror's proposed strategy compared to a mailed survey expressed as an overall percentage difference between the two methods or a similar numerical comparison. This comparison shall not reveal any actual costs in the technical proposal; instead, the comparison shall be submitted separately in the financial proposal.

Note: Should the survey's aggregate response rate fall below 90% of the prior year's response rate, the State may exercise the unilateral option to terminate the Contract.

If the MHCC authorizes a survey for any year of the Contract period, the Contractor shall provide the MHCC with the following: the plan for sample selection, an update of written correspondence to be sent to prospective respondents, and an evaluation of follow-up strategy effectiveness for each year surveys are conducted.

3.2.5 Data collection, tracking of return rate and tabulation of responses

Following the mailing of the survey to potential respondents determined by the sampling methodology, the Contractor shall:

- a. Track survey responses for each nursing home to determine each agency's response rate.
- b. Communicate weekly in writing the cumulative return rate for each agency to the MHCC between the time of the distribution of the survey and the due date for final responses.
- c. For facilities with response rates below 50%, implement efforts to increase the response rate as proposed in survey methodology.

Note: A cumulative final response rate will be incorporated into each nursing home's report and the statewide report. Each nursing home's response rate will also be included in the methodological report and in the electronic files prepared for public report.

- d. Collect and tabulate all data from survey respondents. Data collection responsibilities shall include: 1) answering inquiries from potential survey respondents during the survey collection period; 2) collecting the survey responses; and, 3) entering survey responses into an approved electronic format listed below in Section 3.2.7 Report Production for editing, coding, and data cleaning/verification, as needed, in preparation for analysis.
- e. Document, categorize and summarize all inquiries or comments from callers in reference to the survey and the survey process for the purpose of identifying information to be used to improve future surveys and the administration processes. MHCC will provide to the Contractor a log of calls received by MHCC staff for inclusion in the summary.
- f. The Contractor shall provide a written summary of the types of inquiries received by the Contractor and MHCC staff to the MHCC at the completion of the data collection period. A complete categorization and analysis of all inquiries and comments shall be provided as part of the methodological report which is described below.

Note: Callers describing conditions of concern such as potential or perceived harm to residents of nursing homes shall be promptly provided with contact information for the Maryland Department of Health and Mental Hygiene, Office of Health Care Quality (OHCQ) for the purpose of submitting a complaint report for further investigation.

If the MHCC authorizes a survey for any year of the Contract period, the Contractor shall perform each task described in 3.2.5 for each authorized survey.

3.2.6 Data Analysis

Following the completion of data collection, the Contractor shall produce tabulation programs to tabulate the data, conduct methodological analysis, and produce nursing home-specific and statewide aggregate reports as follows:

The Contractor shall conduct methodological analyses to evaluate the reliability of the survey instrument and data collection protocols. Specific methodological analyses will be determined by the Contract Monitor prior to finalizing the project work plan annually for each survey conducted. Types of analyses may include:

- Survey Non-Response Analysis
- Reliability Analysis
- Composite score correlation with overall satisfaction
- Item Level correlation with overall satisfaction
- Skip Pattern Analysis (if applicable)

- Item Level Non-Response Analyses
- Analysis of Multiple Responders
- Trend analysis (as indicated)

3.2.7 Report Production

- a. The Contractor shall produce facility specific and statewide aggregate reports in both paper and electronic formats.
 - 1) Individual agency level reports showing for each agency the results that pertain only to that agency along with a comparison of the agency's results to prior results (if applicable) and statewide results including peer group results (peer groupings used in the nursing home survey are licensed bed size, profit type, and region of services provided).
 - 2) A statewide aggregate report.
- b. The reports shall consist of at least the following:
 - An introduction explaining the purpose of the survey
 - A description of how the survey was conducted (includes sample selection and survey administration methods)
 - Explanation as to how to read and interpret the reports provided
 - An interpretation of composite (if composites are used) and item level scores
 - A brief description of how the information may be used by facility staff to improve care including a list of resources on how to improve care
 - Statewide item level scores
 - A glossary of terms, as needed
- c. Each report shall include interpretations of exhibited data. The MHCC will review and approve drafts of sample nursing home specific and statewide aggregate reports. The Contractor shall obtain the approval of the Contract Monitor prior to any release of the data or reports.
 - 1) The Contractor shall write the reports to meet the information needs of two types of users. The first user is the consumer interested in comparing nursing homes for the purpose of selecting a nursing home for themselves or a family member. The second user is the LTC agency staff for the purpose of comparing the results for a particular agency with similar surveys of the agency or with other quality information to enable the identification of and provide suggestions for improvements by that agency. The perspective of each of these users should be addressed in the interpretation section.
 - 2) To maximize understanding of the reports' content by a non-technical audience, the reports should: a) minimize the use of technical language to only that amount of technical explanation essential to understand the report; b) explain any technical terms that cannot be eliminated; c) limit the use of acronyms and provide an explanation of any acronyms used; d) provide expanded or "drill down" detail for users who wish to know greater detail; and, e) make effective use of graphics to enhance user understanding.
 - 3) Electronic statewide and facility-specific reports shall be formatted to facilitate efficient incorporation into the Maryland Consumer Guide to Long Term Care web site. The

reports must be formatted in such a manner as to allow for easy comparability across facilities. A version of the data in Microsoft Excel, Access, delimited text, or SAS must be provided, allowing for easy conversion to Microsoft SQL, which is the database engine used for the website. This version should have straightforward rows and columns which easily convert to a database. Documentation for the data files such as data dictionary and codebook shall be submitted with the reports. Attachment L “File Layout for Survey Results – Facility Specific Results” should be used to guide the development of reports for the web site.

- 4) The Contractor shall compare the survey(s) conducted under the Contract that results from this solicitation to prior family or resident/client surveys conducted by the MHCC and report on trending of data across the surveys. Statewide and facility level comparisons shall be produced. An interpretation of the comparisons among the surveys shall be prepared by the Contractor which will note opportunities for improvement at both the facility and the state level. The Contractor shall include a section comparing the survey administration procedures in the methodological report described below to delineate similarities and differences between the survey processes, if any.
- 5) The communication plan referenced in 3.2.2.2 shall describe the method of report distribution. Electronic methods of distributing reports shall be encouraged and maximized by the Contractor. Agencies with the capability to receive electronic report formats will receive facility specific reports in electronic format. Facilities lacking such capability will receive paper copies after approval by the Contract Monitor. The process for assessing the capability of organizations to receive electronic reports and the proposed distribution process for reports shall be addressed in the communication plan.
- 6) The Contractor shall provide a separate electronic file of each agency results collected under this contract in a form that will allow MHCC staff to analyze such data at a future date. The Contractor shall also supply two (2) paper copies and one (1) electronic copy of any materials used to conduct survey(s) and all reports produced as a result of survey activities.

If the MHCC authorizes a survey for any year of the Contract period, the Contractor shall perform each task described in 3.2.6 and 3.2.7 for each authorized survey.

3.2.8 Produce a Methodological and Trend Report

The Contractor shall provide a methodological and analytic report which includes the following:

- a. A complete description of sampling and survey administration procedures used;
- b. A complete description of the data processing procedures used;
- c. A complete description of the sampling framework;
- d. A table detailing response rates and dispositions for each nursing home included in the sample;
- e. An evaluation of follow-up strategy effectiveness;
- f. An analysis of response bias and a description of any weighting of the data, if applicable;
- g. A summary of the data using routine tabulations of frequencies of each response for each survey question;
- h. A summary and trend analysis of the data collected for each facility and statewide as

- compared to previous surveys conducted by the MHCC;
- i. Tables indicating standard errors, confidence intervals with appropriate notations, and summary graphs;
 - j. A table with data based on each composite measure (as applicable);
 - k. Tables with data stratified according to the peer groupings as designated for the specific survey; for example: 1) facility size; 2) profit status (profit/not-profit); 3) region of the state; 4) overall ratings (if included); and, 5) other agreed upon elements;
 - l. A comparison of survey administration procedures between the nursing home surveys conducted in 2007-2010 and the current survey to delineate similarities and differences between the two survey processes;
 - m. A categorization and tabulation of caller comments;
 - n. Feedback from communications with nursing homes during data collection that may be useful for future administration of a similar survey;
 - o. A description of problems, if any, encountered in the survey administration process and, for each such problem, the solution adopted;
 - p. The procedures used to maintain confidentiality during the sampling, data collection, data processing, and data storage phases of the project;
 - q. Suggestions for improvement for future surveys;
 - r. Comparisons, if applicable, to the Contractor's previous findings in studies of other states;
 - s. A complete set of data in a format that the MHCC can display on its website; and
 - t. A cleaned data file at the individual level with data dictionary and codebook.

When the MHCC authorizes a survey for any year of the Contract period, the Contractor shall perform each task described in Section 3.2.8 for each authorized survey.

3.2.9 Other Requirements

3.2.9.1 Staff Training

If the Contractor plans to hire staff (non Key-Personnel) to accomplish the work under this Contract, the Contractor shall provide any necessary staff training in advance of the data collection phase of the project. The Contractor shall provide the MHCC with a position description and experience/qualifications for any newly hired staff member. All staff making contact with a respondent or an LTC agency must have verifiable prior survey and telephone contact experience. An outline of the topics to be covered during the training program shall be submitted for review by the Contract Monitor.

3.2.9.2 Proofread Materials

The Contractor shall review all data analyzed for calculation errors and shall review all written text for spelling and grammatical errors. The Contractor shall review any report in both paper and electronic form for formatting errors.

3.2.9.3 Progress Reports

- a. The Contractor shall complete to-date difficulties/issues encountered, and provide solutions implemented to minimize them. The initial progress report is due two weeks after finalizing

the annual project work plan and subsequent reports are due at two week intervals. Because intensity of work will vary throughout the Contract period; the MHCC shall notify the Contractor if reports may be submitted at less frequent intervals. The Contractor shall submit the updated progress report by email or phone.

- b. In addition to the Progress Report, the Contractor shall deliver to the MHCC during the survey collection period, the following documents: 1) a weekly status report on the cumulative survey response rates for each nursing home (beginning after surveys are mailed); and 2) a biweekly submission including inquiries from family members/responsible parties, Contractor summaries by category and the general response to these inquiries.
- c. The Contractor shall prepare and deliver to the MHCC one (1) paper copy and two (2) electronic copies of any file, report, and deliverable required to fulfill this Contract as specified.

3.2.9.4 Attend and Testify at Meetings and Hearings

The Contractor shall be available to attend meetings as required by the MHCC. Such meetings may include a kick-off meeting at project start-up, a meeting at the release of survey findings, and MHCC meetings and legislative meetings as needed. Such meetings will be no more than approximately two (2) to three (3) hours in duration. If a Contractor presentation is required in a meeting, the Contractor shall provide a sufficient number (to be determined by the Contract Monitor) of copies of applicable materials for distribution. Such work shall be considered unit work as referenced in Attachment F (3) Financial Proposal Worksheet 3 - Rates By Labor Category.

The Offeror shall assume that attendance at meetings will be approximately five (5) hours annually, but there is no guarantee of a minimum or maximum number of meeting hours.

3.2.9.5 Satisfy Timetable

The Contractor shall meet the time frames specified in Section 3.3 Key Deliverables.

3.2.9.6 Maintain Key Personnel

The quality of the work under this Contract is directly linked to both the continuity and the quality of the staff assigned by the Contractor. Key personnel shall be, at a minimum, the person responsible for the day to day management of the survey (i.e. the Project Manager or Director) and the persons responsible for the survey analysis (i.e. a research analyst), unless the MHCC approves a substitution. An Offeror may identify additional key personnel in its technical proposal; this will be incorporated into the Contract by reference. Key personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the technical proposal. The Offeror shall submit a letter of commitment from each staff member and any subcontractor assigned to the project with its proposal.

The Contractor may not substitute key personnel, such as the Project Manager or Director, without the prior written approval of the Contract Monitor other than by reason of the individual's death, sudden illness, or termination of employment. To replace any key personnel specified in the Contractor's proposal, the Contractor shall submit the resume of the proposed substitute personnel to the MHCC for approval at least two weeks prior to the proposed effective date of the substitution. All proposed substitute personnel shall have qualifications at least equal to those of the replaced key personnel.

3.2.9.7 Ownership of Data, Software, Information, and Reports

- a. Any data, software, information, and/or reports collected or prepared by the Contractor in the course of performing its duties and obligations under the Contract shall be deemed to be owned by the MHCC. The ownership provision is in consideration of the Contract's use of public funds in collecting or preparing such data, software, information, and reports. These items shall not be used by the Contractor for any independent project of the Contractor or publicized by the Contractor without written permission of the MHCC. Subject to applicable State and Federal laws and regulations, the MHCC shall have full and complete rights to reproduce, duplicate, disclose, and otherwise use all such data, information, and reports. At the termination of the Contract, the Contractor shall make available all such data, software, information, and reports to the MHCC within thirty (30) days following termination of the Contract or such longer period as approved by the MHCC.
- b. Except as otherwise provided in this subsection, if any material able to be copyrighted or patented is developed by the Contractor in the course of performance of the Contract, the MHCC and the State of Maryland shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work, and authorize others to do so.

3.2.9.8 Maintain confidentiality and data security

The Contractor shall demonstrate implementation of confidentiality and data security requirements to protect the identity of individual patients, confidentiality of respondent data and procedures for identifying and handling breaches of confidential data. In the course of collecting and analyzing the data, the Contractor shall examine and have access to information that LTC agencies may consider proprietary and confidential. Additionally, the Contractor may have contact with individually identifiable patient information. It is the policy of the MHCC that confidential patient information, as well as proprietary nursing home information shall be protected. The Contractor shall be bound by all relevant confidentiality requirements in applicable State and Federal laws and regulations regarding personal identifying information, including HIPPA and the Maryland Medical Records Act, Health General Article § 4-301, et.seq. The Contractor shall be responsible for safeguarding the confidentiality of such information and shall require any subcontractor to observe these same protections in dealing with individually identifiable resident information. The importance of such safeguards cannot be overstated. The release of any confidential or proprietary information shall be deemed a breach of contract and may lead to the termination of the Contract.

The Offeror shall sign Attachment H – Conflict Of Interest Affidavit, Attachment I – Business Associate Agreement Form (HIPAA), Attachment I (1) – Breach of Unsecured Protected Health Information, and Attachment J (1) – Non-Disclosure Forms for Solicitation as part of their proposal submission.

After award the Contractor shall sign the MHCC Data Use Agreement (DUA) as part of the Contract. A copy of the MHCC's DUA is included in the Attachments.

3.2.9.9 Returned Surveys

The Contractor shall retain a copy of each returned survey for a minimum of six (6) months following the end of the Contract period and including the option year, if exercised. After the six month period, the Contractor shall contact the MHCC concerning disposition of the surveys. The Contractor shall destroy the surveys at the direction of MHCC. The method of destruction shall safeguard confidentiality of these materials, as described in the DUA. The Contractor shall dispose of the data files (including analysis files developed for work under the Contract) as specified in the DUA.

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3.3 KEY DELIVERABLES for Nursing Home Surveys Scope of Work

Task	Deliverable	Due Date
3.2.2 Pre Survey Activities		
3.2.2.1	Meet with MHCC to finalize project work plan	10 Days after SOCY
3.2.2.2	Finalize a communication plan for approval by MHCC's Contract Monitor	20 Days after SOCY
3.2.2.2	Implement the communication plan to obtain information from each LTC agency to select the sample	30 Days after SOCY
3.2.3 Format Survey Questions and Mailing Materials		
3.2.3.a	Format questions into a document suitable for mailing and recording survey responses	45 Days after SOCY
3.2.3.b	Prepare communication to potential survey recipients for MHCC approval. MHCC will provide a letter from the executive director for inclusion with survey materials	45 Days after SOCY
3.2.3.c	Duplicate surveys and mail to selected sample. Minimize the time frame between receipt of potential respondent names and initial mailing of surveys	60 Days after SOCY
3.2.4 Determine sample size, exclusions, and survey methodology		30 Days after SOCY
3.2.4.a and b	Determine appropriate sample size. Confirm and validate inclusion/exclusion methodology prior to commencement of work. Select final sample according to sampling methodology	Timing proposed in survey methodology
3.2.5 Data Collection and Tracking		
3.2.5.	Receive survey responses; enter into database, perform data cleaning/verification, as needed, in preparation for analysis	Throughout data collection period
3.2.5.a	Track response rate for each nursing home	Throughout data collection period
3.2.5.c	Implement the plan to increase response rate for nursing homes with a response rate below 50%	Throughout data collection period
3.2.5.d	Tabulate responses	Throughout data collection period
3.2.5.e and f	Document, categorize and provide written summaries of inquiries and comments	Throughout data collection period
3.2.6 Survey Data Analysis		
3.2.6	Adapt/write tabulation programs to facilitate reporting of state, peer group, and agency data	Date specified in work plan
3.2.6	Compare collected data (for facilities and statewide) to prior survey results for peer group and domain categories	Four (4) weeks after completion of data collection

3.2.7 Report Production		
3.2.7.a-c	Prepare for approval of MHCC facility-specific and statewide aggregate reports in electronic and paper formats according to the specifications in Section 3.2.8	Four (4) weeks after completion of data collection
3.2.7.c	Consult with Contract Monitor on report format, content, and release of information to facilities. Work plan to include a method for pre-release review by each facility.	Prior to release
3.2.7.c	Distribution of Facility Reports to facilities for pre-release review	Date specified in work plan
3.2.8	Produce a methodology, analytic, and trend report	Date specified in work plan
3.2.9.8-9	Disposition of Returned Surveys & other materials	Per DUA and as noted

***SOCY – Start of Contract Year**

3.4 Subcontractors

3.4.1 For each identified subcontractor include:

- Full legal name.
- A job description or duty statement that outlines the duties and functional responsibilities that will be assigned to the subcontracted firm.
- A brief explanation of why the subcontracted firm was chosen. Stress topics such as applicable skills, knowledge, capabilities, past experience or accomplishments, availability, reasonableness of rates, and notoriety in a field or specialty.
- A one-to-two (1–2) page résumé for each identified subcontractor. Place all subcontractor résumés in the 4.5.3.6 Experience and Qualifications of Proposed Staff Section. To the extent possible, résumés should not include personal information such as a social security number, home address, home telephone number, marital status, sex, birth date, age, or similar identifiers.

A letter of agreement, signed by an official representative of each subcontracted firm, acknowledging their intended participation/availability and confirmation that they have read or been made aware of the terms and conditions of the proposed contract. Place all subcontractor and/or consultant letters of agreement in the 4.5.3.6 Experience and Qualifications of Proposed Staff Section.

3.5 Security Requirements

3.5.1 Physical Security

3.5.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of State personnel, each such employee or agent shall provide additional photo identification.

3.5.1.2 At all times at any facility, the Contractor’s personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badging, and wearing the badge in a visual location at all times.

3.5.2 Information Technology

- 3.5.2.1 Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available on-line at: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- 3.5.2.2 The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall fill-out any necessary paperwork as directed and coordinated with the CM to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

3.6 MBE Reports

- 3.6.1 In the event that there is an MBE Goal, the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports:
- a. MBE Report D-5, the Contractor's Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer
 - b. MBE Report D-6, the MBE Subcontractor's Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

3.7 Invoicing and Payment Type

- 3.7.1 All invoices for services shall be submitted to the Contract Monitor, identified in sub-section 1.6, no later than the end of the month following the month in which service was provided. Invoices shall include:
- Contractor name,
 - Remittance address,
 - Federal taxpayer identification (or if owned by an individual his/her social security number),
 - Invoice period,
 - Invoice date,
 - Invoice number,
 - Amount due, and
 - Purchase order number(s) being billed.

Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.

- 3.7.2 Contractor shall have a process for resolving billing errors.
- 3.7.3 Payments will be made as set forth herein.
- 3.7.4 The Contractor shall submit invoices in accordance with the following schedule:

Scope of Work #	Description of Deliverable	% Payment
3.2.2 through 3.2.3	Upon satisfactory completion of all pre-survey activities, formatting and duplication of survey for mailing.	Twenty- Five percent (25%) of Total Annual Fixed Work
3.2.5	Upon acceptable completion of the data collection for all nursing homes	Twenty-Five percent (25%) of total annual fixed work price
3.2.7 and 3.2.8	Upon approval of plan-specific reports and release of reports to nursing homes for review	Twenty-Five percent (25%) of total annual fixed work price
3.2.8 and 3.2.9	Upon acceptable completion of methodological and trend reports, both facility specific and statewide in electronic and other information as specified	Twenty-Five percent (25%) of total annual fixed work price

3.7.5 Funds for any contract resulting from this RFP are dependent upon appropriations from the Maryland General Assembly.

3.7.6 The MHCC reserves the right to reduce or withhold contract payment (see terms set forth in this Section above) in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the contract until such time as the Contractor brings itself into full compliance with the contract. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, §§15-215 - 15-223 and with COMAR 21.10.02.

3.7.7 Excluded services

Reimbursement for travel, parking and mileage will not be paid by the State under the terms of the Contract. The State will not pay for administrative or clerical services; such services must be accounted for in the Contractor's fully-loaded labor rates.

3.7.8 Labor Categories

3.7.8.1 Unit Work

All labor rates provided by the Offeror for the labor categories outlined in the price proposal (ATTACHMENT F) shall be fully loaded labor rates including direct and indirect charges. Reimbursement for travel, parking and mileage will not be paid under the terms of the contract.

In preparing the financial proposal, Offerors must use the labor categories provided for unit work as indicated. Proposed unit work personnel must meet the following minimum requirements for experience and proficiency to be eligible for these labor categories:

Project Manager - Must have a minimum of five (5) years experience conducting consumer surveys and healthcare consulting services.

Research Statistician— Expert knowledge and understanding of standard research methodology and principles; techniques of descriptive and inferential statistics; of the principles involved in designing and executing statistical research studies in public health, health related fields or public administration.

3.8 Substitution of Personnel

3.8.1 Continuous Performance of Key Personnel

Unless substitution is approved per sections 1.33.2-1.33.4 of this section, key personnel shall be the same personnel proposed in the Contractor’s technical proposal, which will be incorporated into the Contract by reference. Such identified key personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the technical proposal. Key personnel may not be removed by the Contractor from working under this Contract as described in the RFP or the Contractor’s technical proposal without the prior written concurrence of the Contract Monitor.

3.8.2 Definitions

As used in this section:

“**Contract Monitor**” means the Contract Monitor previously identified in this solicitation, and/or a person designated in writing by the Contract Monitor or the Department or agency to act for the Contract Monitor concerning Contractor personnel substitution issues.

“**Day**” or “**Days**” means calendar day or days.

“**Extraordinary Personal Circumstance**” means any circumstance in an individual’s personal life that reasonably requires immediate and continuous attention for more than 15 days that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances might include but are not limited to: a sudden leave of absence to care for a family member that is injured, sick or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of the individual’s home that causes a major disruption in the individual’s normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; military service call-up; etc.

“**Incapacitating**” means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s technical proposal.

“**Sudden**” means when the Contractor has less than 30 days’ prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

3.8.3 Key Staff General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in section 1.33.4 of this section.

3.8.4 Replacement Circumstances

The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute personnel have qualifications at least equal to those of the personnel for whom the replacement is requested.

The Contractor shall provide the Contract Monitor with a substitution request that shall include:

- A detailed explanation of the reason(s) for the substitution request
- The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor
- The official resume of the current employee for comparison purposes
- Any required credentials

The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor, and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.

The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested key personnel replacement.

3.8.5 Voluntary Staff Replacement

To voluntarily replace any key staff, the Contractor shall submit a substitution request as described in section 1.33.3 of this section to the Contract Monitor at least 15 days prior to the intended date of change. Except in a circumstance described in section 1.33.4.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

3.8.6 Staff Replacement Due to Vacancy

The Contractor shall replace key staff whenever a vacancy occurs due to the sudden termination, resignation or leave of absence due to an extraordinary personal circumstance of such staff, Incapacitating injury, illness or physical condition, or death. (A termination or resignation with 30 days or more advance notice shall be treated as a Voluntary Staff Replacement as per section 1.33.4.1 of this clause.)

Under any of the above 1.33.4.2 circumstances, the Contractor shall identify a suitable replacement and provide the same information or items required under Section 1.33.3 of this section within 15 days of the sooner of the actual vacancy occurrence or from when it was first learned by the Contractor that the vacancy would be occurring.

3.8.7 Staff Replacement Due to an Indeterminate Absence

If any key staff has been absent from his/her job for a period of 10 days due to injury, illness, or other physical condition, leave of absence under a family medical leave or Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next 20 days to fully resume his/her job duties, before the 25th day of continuous absence the Contractor shall identify a suitable replacement and provide the same information or items required under section 1.33.3.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option of the Contract Monitor the

original staff may continue to work under the Contract, or the replacement staff will be authorized to replace the original staff, notwithstanding the original staff's ability to return.

3.8.8 Directed Staff Replacement

The Contract Monitor may direct the Contractor to replace any staff that is perceived as being unqualified, non-productive, unable to fully perform his/her job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or that has committed a major infraction(s) of law or agency or Contract requirements. Normally a directed replacement would only occur after prior notification of problems with requested remediation, as described in 1.33.4.4.b, below. If after such remediation the Contract Monitor determines that the staff performance has not improved to the level necessary to continue under the Contract, if at all possible at least 15 days' replacement notification will be provided. However, if the Contract Monitor deems it necessary to remove the offending individual with less than 15 days' notice, the Contract Monitor can direct the removal in a timeframe of less than 15 days, to include immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with section 1.33.3 of this section, provide a suitable replacement for approval within 15 days of the notification of the need for removal, or the actual removal, if that occurs first.

If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within 10 days of the date of notice and implement the Remediation Plan immediately upon written acceptance by the Contract Monitor, or revise and resubmit the plan to the Contract Monitor within 5 days, as directed in writing by the Contract Monitor.

Should performance issues persist despite the previously agreed to Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit, or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the key staff at issue.

Replacement or substitution of personnel under this section shall be in addition to and not in lieu of the State's remedies under the Contract.

3.9 Insurance Requirement

- 3.9.1 The Contractor shall maintain property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors.
- 3.9.2 The Contractor shall maintain a policy of general liability insurance that is of the proper type and limits specified below.
- 3.9.3 The Contractor shall provide a copy of the Contractor's current certificate of insurance, which, at a minimum, shall contain the following:
 - a. Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.

- b. General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.

\$2,000,000 - General Aggregate Limit (other than products/completed operations)

\$1,000,000 - Each Occurrence Limit

\$2,000,000 – Personal and Advertising Injury Limits

- 3.9.4 Upon execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time, as directed by the Contract Monitor.
- 3.9.5 The State shall be named as an additional named insured on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage (Worker's Compensation excepted). Certificates of insurance evidencing this coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 60 days advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.9.6 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.9 Problem Escalation Procedure

- 3.9.1 The Contractor must provide and maintain a Problem Escalation Procedure for both routine and emergency situations. This Procedure must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor as well as other personnel should the Contract Monitor not be available.

- 3.9.2 The Contractor must provide a Problem Escalation Procedure no less than 10 days prior to the beginning of the contract, and within 10 days after the start of each contract year (and within 10 days after any change in circumstance which changes the Procedure). The Problem Escalation Procedure shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Details shall include:

- The process for establishing the existence of a problem;
- The maximum duration that a problem may remain unresolved at each level before automatically escalating to a higher level for resolution;
- Circumstances in which the escalation will occur in less than the normal timeframe;
- The nature of feedback on resolution progress, including the frequency of feedback;
- Identification of and contact information for progressively higher levels that would become involved in resolving a problem;
- Contact information for persons responsible for resolving issues after normal business hours (*i.e.*, evenings, weekends, holidays, etc.) and on an emergency basis; and

- A process for updating and notifying the Contract Monitor of any changes to the Problem Escalation Procedure.

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SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit proposals in separate volumes:

- Volume I - TECHNICAL PROPOSAL
- Volume II - FINANCIAL PROPOSAL

4.2 Proposals

4.2.1 Volume I-Technical Proposal and Volume II-Financial Proposal shall be sealed separately from one another. Each Volume shall contain an unbound original, so identified, and five (5) copies. The two sealed Volumes shall be submitted together under one label bearing:

- The RFP title and number,
- Name and address of the Offeror,
- The volume number (I or II), and
- Closing date and time for receipt of proposals

4.2.2 An electronic version of Volume I- Technical Proposal and Volume II- Financial Proposal, both in searchable pdf format, shall also be submitted as separate files for each "Volume", labeled Volume I-Technical Proposal and Volume II-Financial Proposal with the unbound originals, technical or financial volumes, as appropriate. Electronic media is to be submitted on CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

4.2.3 A second electronic version of Volume I and Volume II in searchable pdf format shall be submitted on CD for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see sub-section 1.19).

4.2.4 All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

4.2.5 Proposals and modifications will be shown only to State employees, members of the Evaluation Committee, or other persons, deemed by the Department to have a legitimate interest in them.

4.3 Delivery

Offerors may either mail or hand-deliver proposals.

4.3.1 For U.S. Postal Service deliveries, any proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If a vendor chooses to use the United States Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. A vendor using first class mail will not be able to prove a timely delivery at the mailroom and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.

- 4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The register of proposals will be open to inspection only after the procurement officer makes a determination recommending the award of the contract.

4.4 Volume I – Technical Proposal

Note: No pricing information is to be included in the Technical Proposal (Volume I). Pricing will only be included in the Financial Proposal (Volume II).

4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2, above, the unbound original, five (5) copies and the electronic version shall be provided. The RFP sections are numbered for ease of reference, i.e., Section 1 Title and Table of Contents, Section 2 Transmittal Letter, Section 3 Executive Summary, etc. In addition to the instructions below, the Offeror's Technical Proposal should be organized and numbered in the same manner as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by Section number.

4.4.2 Additional Required Technical Submissions

The following documents shall be included in the Technical Proposal; each in its own Section:

- a. Completed Bid/Proposal Affidavit - Attachment B
- b. Completed Minority Business Participation Form - Attachment D-1 (in a separately sealed envelope)
- c. Completed Living Wage Affidavit - Attachment G-1
- d. Conflict of Interest Affidavit and Discloser (Attachment H)
- e. Breach of Unsecured Protected Health Information (Attachment I-1, if applicable)
- f. Non-Disclosure Form (Attachment J-1)

4.4.3 The Technical Proposal shall include the following in this order:

4.4.3.1 Title and Table of Contents

The Technical Proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents shall follow the title page for the Technical Proposal organized by Section, sub-section and page number.

4.4.3.2 Claim of Confidentiality

Information which is claimed to be confidential is to be noted by reference and included after the Title page and before the Table of Contents, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included (see sub-section 1.19).

4.4.3.3 Transmittal Letter

A transmittal letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP.

- The name, title, address, telephone number and e-mail address of the person authorized to bind the offeror to the contract, who will receive all official notices concerning this RFP;
- The name, title, address, telephone number and e-mail address of a secondary person, who will receive all official notices concerning this RFP; in the event that the first is unavailable.
- The Offeror's Federal Tax Identification Number or Social Security Number.
- eMaryland Marketplace Number

4.4.3.4 Executive Summary

Offerors shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary". Offerors shall clearly demonstrate an understanding of the objectives and goals of the Department as well as an understanding of the Scope of Work. This section should also include an analysis of the effort and resources, which will be needed to realize the Department's objectives.

The summary shall also identify any exceptions Offerors have taken to the requirements of this RFP, the Contract (**Attachment A**), or any other attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the summary shall so state.

4.4.3.5 Proposed Work Plan

- a. Offerors shall give a definitive description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. It shall include the specific methodology and techniques to be used by Offerors in providing the required services as outlined in Section 3 of the RFP under sub-section 3.2 Scope of Work-Requirements. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Product deadlines considered contract deliverables must be recognized in the Work Plan.

4.4.3.6 Corporate Qualifications and Capabilities

Offerors shall include information on past corporate experience with similar projects and/or services. Offerors shall describe how their organization can meet the requirements of this RFP and shall include the following:

- a. An overview of the Offeror's experience and capabilities providing similar services. This description shall include:
 - i. The number of years the Offeror has provided these services;

- ii. The number of clients and geographic locations that the Offeror currently serves.
- b. The names and titles of key management personnel directly involved with supervising the services rendered under this Contract.
- c. Describe corporate staff participation in local or national organizations for public opinion and/or healthcare research.
- d. At least three references from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. Each reference shall be from a client for whom the Offeror provided service within the past five years and shall include the following information:
 - i. Name of client organization
 - ii. Name, title, telephone number and e-mail address, if available, of point of contact for client organization
 - iii. Value, type, duration, and services provided

MHCC reserves the right to request additional references or use references not provided by an Offeror.

- e. Offerors must include in their proposal a commonly accepted method to prove its fiscal integrity. Some acceptable methods include but are not limited to one or more of the following:
 - i. Dunn and Bradstreet Rating
 - ii. Standard and Poor's Rating
 - iii. Recently audited (or best available) financial statements
 - iv. Lines of credit
 - v. Evidence of a successful financial track record, and
 - vi. Evidence of adequate working capital
- f. The Offeror's process for resolving billing errors.
- g. Corporate organizational chart that identifies the complete structure of the company including any parent company, headquarters, regional offices or subsidiaries of the Offeror.
- h. Complete list of any subcontractors other than those used to meet a Minority Business Enterprise subcontracting goal. This list shall include a full description of the duties each subcontractor will perform and why/how they were deemed the most qualified for this project.
- i. Legal Action Summary. This summary shall include:
 - i. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action.
 - ii. A brief description of any settled or closed legal actions or claims against the offeror over the past five (5) years.
 - iii. A description of any judgments against the Offeror within the past five (5) years, including the case name, number court, and what the final ruling or determination was from the court.
 - iv. In instances where litigation is on-going and the offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

i. Past State Experience

As part of its offer, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or that have been completed within the last 5 years. For each identified contract the Offeror is to provide:

- i. The State contracting entity
- ii. A brief description of the services/goods provided
- iii. The dollar value of the contract
- iv. The term of the contract
- v. The State employee contact person (name, title, telephone number and if possible e-mail address)
- vi. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

4.4.3.7 Experience and Qualifications of Proposed Staff

Offerors shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities as detailed in the Work Plan. Include individual resumes for the key personnel who are to be assigned to the project if the offeror is awarded the contract. Each resume should include the amount of experience the individual has had relative to the work called for in this solicitation. Describe key staff's participation in local or national organizations for public opinion and/or healthcare research. Letters of intended commitment to work on the project, including non-Minority Business Enterprise subcontractors should be included in this section.

Offerors are required to provide an Organizational Chart outlining personnel and their related duties. Include job titles and the percentage of time each individual will spend on their assigned tasks. Offerors using job titles other than those commonly used by industry must provide a crosswalk.

4.4.3.8 Problem Escalation Clause

The Offeror must explain, as per the requirements in Section 3.9, how problems with work under the Contract will be escalated in order to resolve all issues in a timely manner.

4.4.3.9 Economic Benefit Factors

Offerors shall submit, with their proposals, a narrative describing the benefits that will accrue to the Maryland economy as a direct or indirect result of their performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered.

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the contract term.

As applicable, for the full duration of the contract, including any renewal period, or until the commitment is satisfied, the contractor shall provide to the procurement officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

Please note that in responding to this section, the following do not generally constitute economic benefits to be derived from this contract:

1. generic statements that the State will benefit from the offeror's superior performance under the contract;
2. descriptions of the number of offeror employees located in Maryland other than those that will be performing work under this contract; or
3. tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this contract.

Discussion of Maryland based employees or locations may be appropriate if the offeror makes some projection or guarantee of increased or retained presence based upon being awarded this contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- The contract dollars to be recycled into Maryland's economy in support of the contract, through the use of Maryland subcontractors, suppliers and joint venture partners.
- The number and types of jobs for Maryland residents resulting from the contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the contractor has committed, including contractual commitments at both prime and, if applicable, subcontract levels.
- Tax revenues to be generated for Maryland and its political subdivisions as a result of the contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the contract.
- Subcontract dollars committed to Maryland small businesses and MBEs.
- Other benefits to the Maryland economy which the offeror promises will result from awarding the contract to the offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the contract award. Offerors may commit to benefits that are not directly attributable to the contract, but for which the contract award may serve as a catalyst or impetus.

4.4.3.9 Offeror Technical Response to RFP Requirements

If the State is seeking Offeror agreement to a requirement(s), Offerors shall state agreement or disagreement. Offerors shall address each major section in their technical proposals and describe how their proposed services will meet the requirement(s). Any paragraph in the technical proposal that responds to a work requirement shall include an explanation of how the work will be done. Offerors must bear in mind that any exception to a requirement, term or condition may result in having their proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

4.4.3.10 Certificate of Insurance

The Offeror shall provide a copy of the Offeror's current certificate(s) of insurance with the prescribed limits set forth in Section 3.7.3.

4.5 Volume II - Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 4.2, the Contractor shall submit an original unbound copy, five (5) copies, and an electronic version in .pdf. format of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F**. Complete the price sheets only as provided in the Financial Proposal Instructions.

SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE

5.1 Evaluation Criteria

Evaluation of proposals will be based on the criteria set forth below. The Contract resulting from this RFP will be awarded to the Offeror(s) that is most advantageous to the State considering price and the technical factors set forth herein. In making this determination, technical factors will receive **greater weight than price factors**.

5.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance.

5.2.1 Proposed Work Plan (Ref. 4.4.3.5)

- a. The overall approach to communication with LTC agencies to obtain information for the sample and communicate important information during and following data collection
- b. An understanding of the complexities involved in survey research including survey sampling and administration methodologies, statistical analysis of survey data and communicating the results of surveys to a variety of audiences.
- c. The approach to formatting and distributing the survey;
- d. The methods proposed to track response rate, collect and tabulate data;
- e. The soundness of the approach to identifying and resolving survey administration problems;
- f. The approach to analysis of data
- g. The soundness of the overall approach for defining, writing and distributing the specified reports;
- h. Appropriateness of the plan for protecting information collected and safeguarding any personally identifiable information.
- i. Are the proposed time frames realistic?
- j. Feasibility and reasonableness of the project and task-specific management approach given the requirements.
- k. To what extent does the proposed work plan succeed in meeting the requirements of the RFP?

5.2.2 Experience and Qualifications of the Proposed Staff (Ref. 4.4.3.7)

- a. Combined experience of the proposed staff in conducting consumer surveys, and other research projects, preferably in health care research, in analyzing data and interpreting the results, and producing reports for public use about satisfaction/experience of care.

- b. Experience of the proposed project manager in the management of survey research projects, preferably in health care research, and analysis of data from consumer surveys.
- c. How well are the named individuals matched to this project with respect to their past work experience and credentials.
- d. Experience of staff in designing, writing, and producing reports required by the project including experience interpreting and explaining technical information for general audiences.
- e. Are letters of commitment from each staff member assigned to the project included?
- f. Evidence of participation in a national organization for public opinion and/or healthcare research by key staff.

5.2.3 Corporate Qualifications (Ref. 4.4.3.6)

- a. To what extent does the vendor demonstrate experience in survey administration, analysis and interpretation of survey results and producing data for public report of health care information?
- b. What is the extent of corporate experience conducting work with survey administration and analysis of data?
- c. What is the extent of corporate experience producing written reports for public use from surveys or similar consumer activities conducted by the vendor?
- d. Is there a demonstrated corporate commitment to providing quality services?
- e. Are there sufficient resources and personnel to complete the tasks?
- f. What is the extent of evidence of participation in a national organization for public opinion and/or healthcare research by some corporate staff.

5.2.4. Executive Summary (Ref. 4.4.3.4)

- a. Extent of offeror's description of purposes and use of experience of care surveys.
- b. Specific contribution sought by the solicitation is understood. i.e. the response illustrates a comprehensive understanding of the requirements and includes an explanation of how the services addressing the requirements will be provided?

5.2.5 Economic Benefit to State of Maryland (Ref. Section 4.4.3.8)

- a. What is the extent of contract dollars to be recycled into Maryland's economy?
- b. How many and what types of jobs for Maryland residents will be created? What collateral job creation or retention may result from an award to this Offeror?
- c. What is the extent of dollars committed to small or minority businesses?
- d. How much tax revenue is anticipated for the State and local subdivisions?

- e. Are other economic benefits to the Maryland economy identified?

5.3 Financial Criteria

All qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on their total price proposed within the stated guidelines (as submitted on **Attachment F**—Financial Proposal Form).

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 requires that procuring units apply a reciprocal preference under the following conditions:

- The most advantageous offer is from a responsible Offeror whose headquarters, principal base of operations, or principal site (that will primarily provide the services required under this RFP) is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The preference does not conflict with a Federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

5.5 Selection Procedures

5.5.1 In General

The Contract will be awarded in accordance with the competitive sealed proposals process found at COMAR 21.05.03. The competitive sealed proposals method allows for discussions and revision of proposals during these discussions; thus, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions.

In either case, the State may determine an Offeror to be not responsible and/or an Offeror's proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of proposals and prior to contract award. If the State finds an Offeror to be not responsible and/or an Offeror's technical proposal to be not reasonably susceptible of being selected for award that Offeror's financial proposal will be returned if still unopened.

Proposals are usually evaluated by a committee, which then makes a recommendation for award to the Procurement Officer. However, the Procurement Officer may evaluate proposals without a committee and recommend an Offeror for award. In either case, the Procurement Officer, with the concurrence of the agency head or designee, will make the final determination for award.

5.5.2 Selection Process Sequence

5.5.2.1 A determination is made that MBE form D-1 is included and is properly completed.

5.5.2.2 Technical proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the MHCC's requirements and the Offeror's ability to perform and to facilitate arrival at a Contract that is most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two weeks of the delivery of proposals to the State. Qualified Offerors will be contacted by MHCC as soon as discussions are scheduled.

5.5.2.3 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal. Proposals are given a final review and ranked.

5.5.2.4 The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the evaluation committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.

5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State may make an award without issuing a BAFO.

5.5.3 Award Determination

Upon completion of all discussions and negotiations, reference checks, and site visits (if any), the Procurement Officer will recommend award of the Contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP.

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SECTION 6 - ATTACHMENTS

ATTACHMENT A – STATE CONTRACT

This is the contract used by DHMH. It is provided with the RFP for informational purposes and is not required at proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the selected Offeror for signature.

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT C – CONTRACT AFFIDAVIT

This form is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer with the Standard Contract (see Attachment A).

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE GOAL AND FORMS

This attachment includes the subcontracting goal statement, instructions and MBE forms D-1 through D-6. Form D-1 must be completed and submitted with the Offeror's technical proposal in a separately sealed envelope. Forms D-2 & D-3 are required within 10 days of receiving notification of recommendation for award.

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS AND FORMS

Financial Proposal forms must be completed and submitted as the Financial Proposal. (See Section 4)

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

ATTACHMENT G (1) – MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT

This document must be completed and submitted with the Technical Proposal.

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT

This document must be completed and submitted with the Technical Proposal.

ATTACHMENT I – BUSINESS ASSOCIATE AGREEMENT FORM (HIPAA)

This document must be completed and submitted with the Technical Proposal, if applicable.

ATTACHMENT I (1) – BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This document must be completed and submitted if a breach occurs during the contract period

ATTACHMENT J (1) – NON-DISCLOSURE FORMS FOR SOLICITATION

This form is to be submitted with the Technical Proposal.

ATTACHMENT J (2) - NON-DISCLOSURE FORMS FOR AWARD

This form is to be submitted after receiving notification of award.

ATTACHMENT K – MHCC DATA USE AGREEMENT (DUA)

This form is to be submitted after receiving notification of award.

**ATTACHMENT L – FILE LAYOUT FOR SURVEY REPORTS –FACILITY SPECIFIC
RESULTS**

ATTACHMENT A – Standard Contract

TITLE

THIS CONTRACT (the “Contract”) is made this _____ day of _____, 2010 by and between _____ and the STATE OF MARYLAND, acting through the MARYLAND HEALTH CARE COMMISSION.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract Monitor” means xxxxxxxx of the MHCC.
- 1.3 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.4 “Department” means the Maryland Department of Health and Mental Hygiene.
- 1.5 “MHCC” means the Maryland Health Care Commission.
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated _____.
- 1.7 “Procurement Officer” means xxxxxxxxxx of the MHCC.
- 1.8 ”RFP” means the Request for Proposals for xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, Solicitation # MHCC xxxxxxxx, and any amendments thereto issued in writing by the MHCC.
- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Work

- 2.1 The Contractor shall provide all deliverables as defined in the RFP Section 3. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Technical Proposal

Exhibit C – The Financial Proposal

Exhibit D - State Contract Affidavit, executed by the Contractor and dated _____.

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement or conduct of the

Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Period of Performance

The Contract resulting from this RFP shall be for a period of (enter number) years (change to months if necessary) beginning on (enter contract start date) and ending on (enter contract end date). The Contractor shall provide services upon receipt of official notification of award.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, MHCC shall pay the Contractor in accordance with the terms of this Contract and at the rates specified in Attachment F, Contractor's Financial Proposal. Except with the express written consent of the Procurement Officer, payment to the Contractor, pursuant to this Contract, shall not exceed \$_____.

(Insert in unknown quantity contracts) Contractor shall notify the Contract Monitor, in writing, at least 60 days before payments reach the specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (i) promptly consult with the MHCC and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete MHCC-defined critical work in progress prior to the date the stated amount will be reached; and (insert in Information Technology contracts)(ii) secure data bases, systems, platforms and/or applications which the Contractor is working on so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the MHCC's receipt of a proper invoice for services provided by the Contractor, acceptance by the MHCC of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Charges for late payment of invoices other than as prescribed by Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 1, are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other MHCC payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may

refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Contractor's eMarylandMarketplace vendor ID number is _____.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

7. Patents, Copyrights, Intellectual Property

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related

settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

- 7.3** If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

9. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

10. Indemnification

- 10.1** The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2** The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.3** The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the

State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., State Government Article, §15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of the Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

- 13.1** This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2** The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 13.3** Any and all references to the Maryland Code Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

19. Delays and Extensions of Time

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The MHCC unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the MHCC.

21. Pre-Existing Regulations

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, §11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, §13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, §§14-101 - 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State/MHCC, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

24. Documents Retention and Inspection Clause

The Contractor and sub-contractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the MHCC hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the MHCC, including the procurement officer or designee, at all reasonable times.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above:

- a. That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly authorized representatives, shall be granted access to the Contractor's contract, books, documents and records necessary to verify the cost of the services provided under this contract, until the expiration of four years after the services are furnished under this contract; and

- b. That similar access will be allowed to the books, documents and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is sub-contracting to provide services with a value of \$10,000 or more in a twelve-month period to be reimbursed through funds provided by this contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the MHCC's Contract Manager, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the MHCC's Contract Monitor. Any subcontracts shall include such language as may be required in various clauses contained within this solicitation and attachments. The contract shall not be assigned until all approvals, documents and affidavits are completed and properly registered. The MHCC shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

28. Liability

28.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- a. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;
- b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

- c. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims, arising under Section 10, "Indemnification", of this Contract, are included in this limitation of liability only if the MHCC is immune from liability. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the MHCC is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

(Corporate name of Parent Company) hereby guarantees absolutely the full, prompt and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. (Corporate name of Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the MHCC, which approval the MHCC may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Parent Company) further agrees that if the MHCC brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

30. Living Wage

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least **the minimum amount set by law for the applicable Tier**. If a Contractor is an out of state contractor, this contract is deemed to be a Tier 1 Contract.

31. Commercial Non-Discrimination

- 31.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 31.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DBM, in all subcontracts.
- 31.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Md. Code Ann., State

Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth in Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the MHCC. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State/MHCC from participating in MHCC contracts, and other sanctions.

32. Prompt Pay Requirements

32.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MHCC, at its option and in its sole discretion, may take one or more of the following actions:

- a. Not process further payments to the contractor until payment to the subcontractor is verified;
- b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- e. Take other or further actions as appropriate to resolve the withheld payment.

32.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:

- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

32.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MHCC, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

- a. Affect the rights of the contracting parties under any other provision of law;
- b. Be used as evidence on the merits of a dispute between the MHCC and the contractor in any other proceeding; or
- c. Result in liability against or prejudice the rights of the MHCC.

32.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

- 32.5 To ensure compliance with certified MBE subcontract participation goals, the MHCC may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - b. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - (a) The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
 - c. If the MHCC determines that the Contractor is in noncompliance with certified MBE participation goals, then the MHCC will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - d. If the MHCC determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the MHCC requires, the MHCC may then:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
 - e. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

33. Administrative

33.1 Contract Monitor. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Contract Manger for determination.

33.2 Notices. All notices, excluding claims or disputes, are to be sent as follows:

If to the State: (Enter name of Contract Monitor)
(Enter name of facility, administration or office of Contract Monitor)
Maryland Department of Health and Mental Hygiene
(Enter complete address of Contract Monitor including room number)

If to the Contractor: _____

33.3 As required in paragraph 12 of this Attachment A, notice of claims or disputes are to be sent to the Procurement Officer identified in Section 1, sub-section 1.5 of this RFP. Such notices shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid.

33.4 Incorporation by Reference

This contract, identified as Attachment A, consists of the entire RFP document DHMH/OPASS _____ - _____ all Parts, including all Exhibits, Appendices and Addenda, and the successful Offeror's entire final proposal including both the financial and the technical elements dated _____ (technical element) and _____ (financial element), which are incorporated into this contract by reference.

Note: Incorporation by reference does not necessarily create a public record permissible for disclosure.

34 Confidentiality

The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with _____. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA, 42 U.S.C. § 1320d et seq. and implementing regulations at 45 CFR Parts 160 and 164) and the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Agency for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

35. Compliance With HIPAA And State Confidentiality Law

35.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq. and implementing regulations including 45 CFR Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal HIPAA requirements;

- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
 - (c) Otherwise providing good information management practices regarding all health information and medical records.
- 35.2 If in connection with the procurement or at any time during the term of the contract, the MHCC determines that functions to be performed in accordance with the Services to Be Performed set forth in Part I constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501.
- 35.3 Protected Health Information as defined in the HIPAA regulations at 45 CFR 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

36. Limited English Proficiency

The contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Gov't Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and DHMH Policy 02.06.07.

MHCC 12-006
Experience of Care Surveys for Maryland Nursing Homes

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND

BY: MARYLAND HEALTH CARE COMMISSION

By:

By: Ben Steffen, Interim Executive Director

Date

Date

Witness

Witness

Approved for form and legal sufficiency this _____ day of _____, _____.

Assistant Attorney General (Signature)

Assistant Attorney General (Print)

APPROVED BY BPW: _____
(Date)

(BPW Item #)

ATTACHMENT B – Bid/Proposal Affidavit

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona

fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011



ATTACHMENT C - Contract Affidavit

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or

other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
 - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

that (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below,
or the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011

ATTACHMENT D – Minority Business Enterprise Goal And Forms

Attachment D1

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with bid or offer)

This document **MUST BE** included with the bid or offer. If the Bidder or Offeror fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. MHCC 12-006, I affirm the following:

1. ☐ I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of 25% percent and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply):

<u>7%</u> percent African American	<u>4%</u> percent Asian American
<u>0%</u> percent Hispanic American	<u>12%</u> Woman-Owned

Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

OR

- ☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
- (a) Outreach Efforts Compliance Statement (Attachment D2)
 - (b) Subcontractor Project Participation Certification (Attachment D3)
 - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Project Number:	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	

Continue on a separate page, if needed.

SUMMARY

Total <i>African-American</i> MBE Participation:	_____ %
Total <i>Asian American</i> MBE Participation:	_____ %
Total <i>Hispanic American</i> MBE Participation:	_____ %
Total Woman-Owned MBE Participation:	_____ %
Total <i>Other</i> Participation:	_____ %
Total <i>All MBE</i> Participation:	_____ %

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

Bidder/Offeree Name

(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____

Title: _____

Date: _____

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Outreach Efforts Compliance Statement

Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the bid or offer submitted in response to Solicitation No. _____, Bidder/Offeror states the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
 - a. ☐ This project does not involve bonding requirements.

OR

 - b. ☐ Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
 - a. ☐ Bidder/Offeror did/did not attend the pre-bid/proposal conference.

OR

 - b. ☐ No pre-bid/proposal conference was held.

Bidder/Offeror Printed Name

By: _____
Signature

Address: _____

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment A within 10 working days of notification of apparent award.

_____ (prime contractor) has entered into a contract with _____ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its bid or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or proposal;
- (3) fail to use the certified minority business enterprise in the performance of the contract; or
- (4) pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

PRIME CONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date

SUBCONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date

This form is to be completed
monthly by the prime
contractor.

Attachment D4

Maryland Department of Health and Mental Hygiene Minority Business Enterprise Participation Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
Report is due to the MBE Officer by the 10th of the month following the month the services were provided.	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____
Note: Please number reports in sequence	

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	FAX:	Email:																																					
Subcontractor Name:		Contact Person:																																					
Phone:	FAX:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table border="1"> <thead> <tr> <th></th> <th><u>Invoice#</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$ _____			List dates and amounts of any outstanding invoices: <table border="1"> <thead> <tr> <th></th> <th><u>Invoice #</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$ _____		
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Total Dollars Unpaid: \$ _____																																							

**If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

****Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

_____ Contract Monitor
_____ Contracting Unit
Department of Health and Mental Hygiene

Minority Business Enterprise Participation Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____	Contract #
Reporting Period (Month/Year): _____	Contracting Unit:
Report is due by the 10th of the month following the month the services were performed.	MBE Subcontract Amount:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:																						
MDOT Certification #:																						
Contact Person:	Email:																					
Address:																						
City: Baltimore	State:	ZIP:																				
Phone:	FAX:																					
Subcontractor Services Provided:																						
List all payments received from Prime Contractor during reporting period indicated above. <table border="1"> <thead> <tr> <th><u>Invoice Amt</u></th> <th><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td></tr> <tr><td>2.</td><td></td></tr> <tr><td>3.</td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		Total Dollars Paid: \$ _____		List dates and amounts of any unpaid invoices over 30 days old. <table border="1"> <thead> <tr> <th><u>Invoice Amt</u></th> <th><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td></tr> <tr><td>2.</td><td></td></tr> <tr><td>3.</td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		Total Dollars Unpaid: \$ _____	
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<u>Invoice Amt</u>	<u>Date</u>																					
1.																						
2.																						
3.																						
Total Dollars Unpaid: \$ _____																						
Prime Contractor:	Contact Person:																					

****Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

_____ Contract Monitor
_____ Contracting Unit
Department of Health and Mental Hygiene

Signature: _____ Date: _____
(Required)

MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE
Code of Maryland Regulations (COMAR)
Title 21, State Procurement Regulations
(regarding a waiver to a Minority Business Enterprise subcontracting goal)

COMAR 21.11.03.11 - Waiver.

- A. If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for certified MBE participation, the bidder or offeror may request, in writing, a waiver to include the following:
- (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;
 - (2) A detailed statement of the efforts made to contact and negotiate with certified MBEs including:
 - (a) The names, addresses, dates, and telephone numbers of certified MBEs contacted, and
 - (b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;
 - (3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;
 - (4) A list of minority subcontractors found to be unavailable. This list should be accompanied by an MBE unavailability certification (MBE Attachment D6) signed by the minority business enterprise, or a statement from the apparent successful bidder or offeror that the minority business refused to give the written certification: and
 - (5) The record of the apparent successful bidder or offeror's compliance with the outreach efforts required under Regulation .09B(2)(b).

A waiver may only be granted upon a reasonable demonstration by that MBE participation could not be obtained or could not be obtained at a reasonable price.

If the waiver request is determined not to meet this standard, the bidder or offeror will be found non-responsive (bid) or not reasonably susceptible for award (proposal) and removed from further consideration.

- B. A waiver of a certified MBE contract goal may be granted only upon reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.
- C. An agency head may waive any of the provisions of Regulations .09-.10 for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.
- D. When a waiver is granted, except waivers under Section C, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE Liaison Officer with another copy forwarded to the Office of Minority Affairs.

MBE ATTACHMENT D6

MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

Section I (to be completed by PRIME CONTRACTOR)

I hereby certify that the firm of _____
Name of Prime Contractor)

located at _____,
(Number) (Street) (City) (State) (Zip)

on _____ contacted certified minority business enterprise, _____
(Date) (Name of Minority Business)

_____ located at _____,
(Number) (Street) (City) (State) (Zip)

seeking to obtain a bid for work/service for project number _____, project name _____

List below the type of work/ service requested:

Indicate the type of bid sought, _____. The minority business enterprise identified above is either unavailable for the work /service in relation to project number _____, or is unable to prepare a bid for the following reasons(s):

The statements contained above are, to the best of my knowledge and belief, true and accurate.

(Name) (Title)

(Number) (Street) (City) (State) (Zip)

(Signature) (Date)

Note: Certified minority business enterprise must complete Section II on reverse side.

Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)

I hereby certify that the firm of _____ MBE Cert.# _____
(Name of MBE Firm)

located at _____
(Number) (Street) (City) (State) (Zip)

was offered the opportunity to bid on project number _____, ON _____
(Date)

by _____
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

(Name) (Title) (Phone)

(Signature) (Fax Number)

ATTACHMENT E – Pre-Proposal Conference Response Form

Solicitation Number – MHCC 12- 006
Experience of Care Surveys for Maryland Nursing Homes

A Pre-Proposal Conference will be held at 10:00 AM, on November 1, 2011, at 4160 Patterson Avenue, Baltimore, MD 21215. Please return this form by October 28, 2011, advising us of your intentions to attend.

Return via e-mail or fax this form to the Point of Contact:

Sharon M. Wiggins
Department of Health and Mental Hygiene
4160 Patterson Avenue
Baltimore, MD 21201
Email: swiggins@mhcc.state.md.us
Fax # (410) 358-8811

Please indicate:

_____ Yes, the following representatives will be in attendance:

1. _____
2. _____
3. _____

_____ No, we will not be in attendance.

Signature

Title

Name of Firm (please print)

FINANCIAL INSTRUCTION FORM

A. Instructions

In order to assist Offerors in the preparation of their financial proposal and to comply with the requirements of this solicitation, Financial Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their financial proposal on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the financial proposal may be rejected. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to all proposed prices.

The financial proposal form is used to calculate the Offeror's TOTAL PRICE PROPOSED.

- A) All Unit/Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15
- B) All Unit Prices must be the actual unit price the State shall pay for the proposed item per this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e. .344 shall be 34 and .345 shall be 35.
- D) Every blank in the financial proposal form shall be filled in.

Except as instructed on the form, nothing shall be entered on the financial proposal form that alters or proposes conditions or contingencies on the prices.

It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the vendor and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the vendor will be treated as provided in COMAR 21.05.03.03.E.

B. Prices to be reflected in financial proposal:

As part of the financial proposal the contractor shall submit prices for each survey type i.e. family survey or resident survey. Prices should be identified as fixed work and variable work. Fixed work should include, at a minimum, the following items:

- Survey format and layout
- Design of cover letters and envelopes
- Fixed printer charges for project set-up, form set-up,
- Obtaining sample from facilities, verifying sample, cleaning and entering sample
- Managing mailing of surveys
- Sample programming and sample generation
- Project updates
- Writing analytical programming using appropriate statistical software
- Development of weights for analysis, as needed
- Conducting analysis of all items
- Developing and providing the facility-specific and statewide reports
- Writing methodological report and providing to MHCC

Any additional items not included in the above list but included in the fixed work pricing should be identified and fully described by the contractor.

Variable work is to be identified fully loaded per family member/responsible party (RP) or recently discharged resident. Variable work prices should include, at a minimum, the following items:

- Printing charges
- Outgoing postage
- Incoming Business Reply Mail postage
- Tracking returned surveys
- Scanning surveys and running data verifications
- Reminder calls, as a method of survey follow up, for example

Any additional items not included in the above list but included variable work should be identified and fully described by the contractor.

ATTACHMENT F (1) - Financial Proposal Worksheet 1

Nursing Home Family/RP Survey:

Fixed Price Work	Contract Year 1	Contract Year 2	Contract Year 3	Option Year
Survey layout and formatting	\$	\$	\$	\$
Design cover letters and envelopes	\$	\$	\$	\$
Fixed printer charges	\$	\$	\$	\$
Sample prep: obtaining from facilities, verifying, cleaning and entering	\$	\$	\$	\$
Sample programming and generation	\$	\$	\$	\$
Manage mailing of surveys	\$	\$	\$	\$
Project updates	\$	\$	\$	\$
Writing analytical programming	\$	\$	\$	\$
Development of weights for analysis, as needed	\$	\$	\$	\$
Conducting analysis	\$	\$	\$	\$
Developing and distributing facility-specific and statewide reports	\$	\$	\$	\$
Writing methodological report	\$	\$	\$	\$
Total (for each Year)	\$	\$	\$	\$

Total Fixed Price Work Family Survey \$_____ (A)
(Sum the totals from Year 1, Year 2, Year 3 and Option Year)

Variable Price Work:

Variable Price Work	Price Per Family Member/RP (P)	Estimated Number of Surveys (S)	Total (P x S)
Contract Year 1	\$	18,000	\$
Contract Year 2	\$	18,000	\$
Contract Year 3	\$	18,000	\$
Option Year	\$	18,000	\$
Total			\$ (B)

ATTACHMENT F (2) - Financial Proposal Worksheet 2

Nursing Home Resident Survey:

Fixed Price Work	Contract Year 1	Contract Year 2	Contract Year 3	Option Year
Survey layout and formatting	\$	\$	\$	\$
Design cover letters and envelopes	\$	\$	\$	\$
Fixed printer charges	\$	\$	\$	\$
Sample prep: obtaining from facilities, verifying, cleaning and entering	\$	\$	\$	\$
Sample programming and generation	\$	\$	\$	\$
Manage mailing of surveys	\$	\$	\$	\$
Project updates	\$	\$	\$	\$
Writing analytical programming	\$	\$	\$	\$
Development of weights for analysis, as needed	\$	\$	\$	\$
Conducting analysis	\$	\$	\$	\$
Developing and distributing facility-specific and statewide reports	\$	\$	\$	\$
Writing methodological report	\$	\$	\$	\$
Total (for each Year)	\$	\$	\$	\$

Total Fixed Price Work Resident Survey \$_____ (C)
 (Sum the totals from Year 1, Year 2, Year 3 and Option Year)

Variable Price Work:

Variable Price Work	Price Per Discharged Resident (P)	Estimated Number of Surveys (S)	Total (P x S)
Contract Year 1	\$	10,000	\$
Contract Year 2	\$	10,000	\$
Contract Year 3	\$	10,000	\$
Option Year	\$	10,000	\$
Total			\$ (D)

ATTACHMENT F (3) - Financial Proposal Worksheet 3 - Rates By Labor Category

UNIT WORK:

The offeror shall plan for 5 hours of unit work in Part I, Section 4.8. The offeror shall submit a fully loaded fixed hourly rate, which shall be charged for any unit work, requested by the MHCC. The rate of unit work shall include all indirect costs, overhead, out-of-pocket costs, etc., the offeror expects to incur in connection with the resulting contract other than travel costs. In-State travel costs (including travel to Washington, D.C.) for unit work will not be reimbursed. Out-of-State travel costs for unit work will be reimbursed only for out-of-state travel that has received the prior written approval of the Contract Monitor, and then only up to the maximum rates allowed by State employees. Travel time, however, is not reimbursable. All unit work will be reimbursed only upon the written approval of the Contract Monitor

Unit Work Price = Price for one (1) hour of unit work.

Professional Category	Hours Projected (P)	Unit Work Price (H)	Total (P x H)
Project Manager	5	\$	\$
Research Statistician	5	\$	\$
Total for Unit Work =			\$ (E)

Total Contract Price = A + B + C + D + E = \$ _____
(Basis of Award)

Offeror shall supply a detailed budget to support the total “Basis of Award” Price entered above

NOTE #1: The Commission intends to make a Single Award as a result of this solicitation. The Contract that results from this RFP shall be a combination Firm Fixed Price Contract as described in COMAR 21.06.03.02 with respect to the Fixed Work services and an Indefinite Quantity Contract with Firm Fixed Unit Prices as described in COMAR 21.06.03.02 & 21.06.03.06 with respect to the Unit Work and Variable Price services.

NOTE #2: The “Total Contract Price” specified above is based on model quantities for the Variable Price Work and Unit Work services and will be used solely for price evaluation, comparison and selection for recommendation for award. The quantities indicated for Estimated Number of Surveys and Estimated Hours of Unit Work are not a guarantee of any minimum or maximum amounts under this contract and may change at any time during the term of the contract. The actual amount to be paid to the Contractor will be calculated using 1) the Firm Fixed Prices specified on the Financial Proposal Sheet for the Fixed Work and Variable Work services, and 2) the actual number of hours authorized and accepted by the Commission for Unit Work.

NOTE #3: All Proposed prices entered above are to be fully-loaded prices that include all costs/expenses associated with the provision of services as required by this RFP. The Proposed prices shall include, but are not limited to: Labor, Profit/Overhead, General Operating and all other expenses except as expressly excluded in the RFP specifications. No other amounts will be paid to the Contractor.

Authorized Signature: _____ **Date:** _____

Printed Name and Title: _____

Company Name:_____

Company Address:_____

FEIN: _____

eMM #: _____

Telephone #: _____

Fax #: _____

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements in the Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid

the imposition of any of the requirements of the Md. Code Ann., State Finance and Procurement Article, Title 18.

- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in the Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage set at Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State and Finance Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry Website at <http://www.dllr.state.md.us/labor/> and clicking on Living Wage.

ATTACHMENT G (1) - Maryland Living Wage Affidavit Of Agreement

Contract No. _____ Tier _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- ☐ Bidder/Offeror is a nonprofit organization
- ☐ Bidder/Offeror is a public service company
- ☐ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- ☐ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with the Md. Code Ann., State Finance and Procurement Article, Title 18 and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- ☐ The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract

- ☐ The employee(s) proposed to work on the contract is/are 17 years of age or younger during the duration of the contract; or
- ☐ The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date

Submit This Affidavit with Bid/Proposal

ATTACHMENT H – Conflict Of Interest Affidavit And Disclosure

Reference COMAR 21.05.08.08

- A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes an Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):
- E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:_____

By:_____ (Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH THE TECHNICAL RESPONSE

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and among the Maryland Medical Assistance Program, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) and _____ (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties”.

WHEREAS, Covered Entity have a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations (45 CFR Parts 160 and 64), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

- A. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- B. Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402.
- C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
- D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

- E. Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- F. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.
- G. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
- H. Unsecured Protected Health Information. “Unsecured Protected Health Information” or “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.
- B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this Agreement
- D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate’s notification to Covered Entity hereunder shall:
 - 1. Be made to Covered Entity without unreasonable delay and in no case later than 50 calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 CFR Part E within 50

- calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
2. Include the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
 3. Be in substantially the same form as Exhibit A hereto; and
 4. Include a draft letter for the Covered Entity to utilize to notify the Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - b) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - c) Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
 - e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.
- F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- G. To the extent applicable, Business Associate shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.
- I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.
- K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.
- M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).
- N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. TERM AND TERMINATION.

- A. Term. The Term of this Agreement shall be effective as of _____, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section IV.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement;
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination.

1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
3. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

V. CONSIDERATION

Business associate recognizes that the promises it has made in this agreement shall, henceforth, be detrimentally relied upon by covered entity in choosing to continue or commence a business relationship with business associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such

action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for protected health information, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS.

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Caroline Baker
Privacy Officer
Department of Health & Mental Hygiene
Division of Corporate Compliance & Integrity
201 W. Preston Street
Room 522
Baltimore, MD 21201-2301
Phone: (410) 767-6039

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____
Phone: _____

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT I-1 - Breach Of Unsecured Protected Health Information

NOTIFICATION TO THE MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section IIID(3) of the Business Associate Agreement between:

- _____, a unit of the Maryland Department of Health and Mental Hygiene (DHMH),
and
- _____ (Business Associate).

Business Associate hereby notifies DHMH that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes / No If yes, do the people live in multiple states? Yes / No

Number of individuals affected by the breach: _____

Names of individuals affected by the breach: _____ (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

ATTACHMENT J (1) - Non-Disclosure Agreement (Solicitation)

THIS AGREEMENT (“Agreement”), made this _____ day of _____, 20____, by and between the State of Maryland (hereinafter “the State”), acting by and through its Maryland Health Care Commission (hereinafter the “Department”), and _____, a corporation with its principal business offices located at _____ (hereinafter the “Offeror”).

RECITALS

WHEREAS, Offeror intends to submit a proposal in response to a Request for Proposals numbered MHCC __ - __ __ and titled (enter RFP title) (the “RFP”), and

WHEREAS, in order for the Offeror to submit such a proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information regarding the State’s (enter the type or nature of the information to be used by the Offeror in preparing a proposal), collectively, the “Confidential Information”.

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the Offeror’s proposal to the RFP (hereinafter referred to as the “Proposal”), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part hereof.
2. Offeror’s qualifications. Offeror represents and warrants that:
 - A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;
 - B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the period covered by this Agreement;
 - C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Proposal; and
 - D. It is the correctly named and identified entity that intends to submit the Proposal and it is not controlling, controlled by, or under common control with the entity that intends to submit the Proposal. If the Proposal will be submitted by a joint venture or any other group of separate business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (i) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (ii) receipt of written notice given by the State to Offeror terminating this Agreement; or (iii) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Proposal. If all Confidential Information is not returned to the State in accordance with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.
4. What constitutes "Confidential Information". Confidential Information means any and all information provided by or made available by the State to Offeror in connection with the Proposal, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that Offeror views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State for Offeror to prepare and submit its Proposal.
5. Use of Confidential Information. In consideration of the State's allowing Offeror access to the Confidential Information:
 - A. Offeror hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
 - B. Offeror shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of preparing its Proposal. Offeror shall limit access to Confidential Information to its employees and agents ("Offeror's Personnel") who have a demonstrable need to know such Confidential Information in order to prepare the Proposal and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Offeror's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Offeror. If Offeror intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the preparation of the Proposal or who will otherwise have a role in performing any aspect of the Proposal, Offeror shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent as it may deem appropriate in its sole and absolute subjective discretion.
6. Return of Confidential Information. Offeror shall return all Confidential Information to the Department within five (5) business days of the State's acceptance of Offeror's Proposal. If Offeror does not submit a Proposal, Offeror shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Offeror authorized to bind the Offeror.

7. Liability for Confidential Information. Offeror acknowledges that any failure by Offeror or Offeror's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, Offeror and each of Offeror's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Offeror and each of Offeror's Personnel consent to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from Offeror and/or each of Offeror's Personnel, as applicable, for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by Offeror or any of Offeror's Personnel to comply with the requirements of this Agreement, Offeror and such Offeror's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
8. Unauthorized Use. Offeror shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Offeror's Personnel or Offeror's former Personnel. Offeror shall, at Offeror's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.
9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.
10. False and fraudulent statements. Offeror acknowledges that pursuant to the Md. Code Ann., State Finance and Procurement Article, § 11-205.1, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.
11. Signing authority for Offeror. The individual signing below on behalf of Offeror warrants and represents that s/he is fully authorized to bind Offeror to the terms and conditions specified in this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.
12. Other obligations. The parties further agree that, unless otherwise agreed in writing: (a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Offeror may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

14. Notices. All notices hereunder shall be in writing and either delivered personally, by express delivery, or sent by certified or registered mail, postage prepaid as follows:

If to the State: **Carol Christmyer**
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

If to the Offeror: _____

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

OFFEROR

STATE OF MARYLAND

By: **MARYLAND HEALTH CARE COMMISSION**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

LIST OF OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual or Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT B

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and _____ (“Offeror”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Offeror to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF OFFEROR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT J (2) – Non-Disclosure Agreement (Award)

THIS NON-DISCLOSURE AGREEMENT (the “Agreement”) is made this _____ day of _____, 20_____, by and between the State of Maryland (the “State”), acting by and through its Maryland Health Care Commission (the “Department”) and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) for (enter a short description of the service) Contract No. MHCC __ - __ - __ dated _____, 20_____, (the “Contract”); and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the RFP and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the RFP or who will otherwise have a role in performing any aspect of the RFP, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former

Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of the Contractor authorized to bind the Contractor.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; and
 - f. The Recitals are not merely prefatory but are an integral part hereof.

Contractor: <INSERT NAME>

Maryland Health Care Commission:

By: _____ (SEAL)

By: _____ (SEAL)

Printed Name and Title

Printed Name and Title

Date

Date

EXHIBIT A

**LIST OF CONTRACTOR’S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO
THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date

EXHIBIT B

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

Contract Number MHCC- 12-006

**AGREEMENT REGARDING DATA COLLECTED ON BEHALF OF THE
MARYLAND HEALTH CARE COMMISSION**

This is an agreement between the _____, hereafter “Contractor,” and the **Maryland Health Care Commission (MHCC)**. It is for the purpose of ensuring the confidentiality, integrity and security of data collected by the contractor in conducting a survey of responsible parties or users of long term care services in Maryland agencies.

- a. **Conditions stating Scope of Use of the Information.** The Contractor warrants that the facts, statements, and other representations made in its Contract with the MHCC regarding the projected scope of use of the information and all other aspects of the information are complete and accurate. The Contractor is bound by the terms of its Contract in the protection of any data obtained in the course of this contract. At the conclusion of this agreement or on the completion of work, the Contractor will return all data files, including analysis files developed for work under the contract and certify to the MHCC that all data has been removed from the Contractor’s system and that all back-up files have been destroyed by the Contractor.
- b. **Conditions Establishing Safeguards for Protection of Data Confidentiality.** The Contractor warrants that all personally identifiable or respondent-specific information will be maintained on a password-protected computer and in a locked office. No respondent information will be disclosed to any person or entity outside of the parties stated under the contract and in supporting documentation. The terms of the contract are express representations, which the Contractor warrants and guarantees it will perform and are included among its obligations under this Agreement. The Contractor shall not disclose, release, reveal, show, sell, lease, loan, or otherwise grant access to the data covered by this agreement except as expressly authorized under the terms of the contract. Within the Contractor’s organization, access to the data shall be limited to the minimum number of individuals necessary to achieve the purpose and access shall be granted only on a need-to-know basis.
- c. **Breach of Agreement.** Any unauthorized use of the data provided or collected by virtue of this agreement shall constitute a breach of the agreement. Any breach of security or unauthorized disclosure shall constitute a breach of this agreement. Any violation of state or federal law with respect to disclosure of this data shall constitute a breach of this agreement. Notwithstanding the breaches specifically enumerated above, any other failure by the Contractor to comply with the terms and obligations of this Agreement may constitute a breach of the agreement. Any alleged failure of the MHCC to immediately claim or act upon a breach does not constitute a waiver of a breach.
- d. **Consequences upon Breach of Agreement.** In the event that the MHCC, in its sole discretion, has a reasonable belief that the Contractor is in breach of this agreement, it may choose among the following options: a) to investigate the matter, including on-site inspection for which the Contractor shall provide access; b) to resolve the dispute by a plan of correction or other alternative; or c) to declare a breach and demand the return of any and all data released or collected under this agreement and to provide no further data.
- e. **Other Remedies.** Notwithstanding and in addition to the special provisions referenced in paragraph 4. above, the MHCC may exercise any and all legal, equitable, and criminal referral remedies in the event of a breach of this agreement. In the event that the MHCC succeeds in a court action to invoke injunctive relief for a violation of this agreement, the Contractor shall pay reasonable attorney’s fees and costs to the MHCC. The Contractor agrees to indemnify and hold harmless the MHCC for any harm to third parties resulting from any breach by the Contractor of the terms of this Agreement and to cooperate with the MHCC in its defense of any third party claim involving the Contractor’s activities under this agreement.
- f. **Rights in Data.** The parties agree that the MHCC retains all ownership rights to the data collected and reports produced under the contract referenced by this agreement and that the Contractor does not obtain any right, title, or interest in the data furnished by or collected on behalf of the MHCC.

The contractor may request, in writing, use of data without individual identifiers for research purposes. Such requests will be considered by the MHCC for up to six months following completion of the contract.

- g. **Modification.** The terms of this agreement may only be changed by a written modification to this agreement, or by the

parties adopting a new agreement.

- h. **Jurisdiction.** The terms of this agreement shall be governed by the laws of Maryland and the Contractor acknowledges doing business in Maryland and agrees to submit to the jurisdiction of the courts of Maryland in the event of an alleged breach of this agreement.
- i. **Custodian.** The following named individual is designated as “Custodian” of the files on behalf of the Contractor and will be personally responsible for the observance of all Conditions of Use, for the protection of confidentiality and security of the data, and for other obligations under this agreement.
- j. **Acknowledgements and Signatures.** On behalf of the Contractor, _____, the undersigned individual hereby attests authorization to enter into this agreement and agrees to all the terms specified herein.

Printed Name

Signature

Date

Name and Title of Custodian Typed or Printed

Signature

Date

On behalf of the MHCC, the undersigned individual hereby attests authorization to enter into this agreement.

Bruce Kozlowski, Director, Center for Long-term and Community-based Services

Signature

Date

**Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215
Telephone: 410-764-3460**

Attachment L - File Layout for Survey Results – Facility-Specific Results

Fac ID	county	year	Response rate	staff admin	care provided	food meals	Autonomy-rights	physical aspects	overall care	recommend	county code	report link local	report link remote
01001	Allegany	2010	57%	3.9	3.6	3.8	3.8	3.6	9.0	96%	01	http://intranet.mhcc.local/leslie/mhccgov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf	http://mhcc.maryland.gov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf
01001	Allegany	2009	62%	3.9	3.7	3.7	3.7	3.7	9.0	95%	01	http://intranet.mhcc.local/leslie/mhccgov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf	http://mhcc.maryland.gov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf
01001	Allegany	2008	63%	3.8	3.7	3.6	3.6	3.5	8.7	93%	01	http://intranet.mhcc.local/leslie/mhccgov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf	http://mhcc.maryland.gov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf
01001	Allegany	2007		3.7	3.6	3.6	3.4	3.5	8.8	98%	01	http://intranet.mhcc.local/leslie/mhccgov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf	http://mhcc.maryland.gov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01001.pdf
01004	Allegany	2010	80%	4.0	3.9	3.8	3.7	3.8	9.7	100%	01	http://intranet.mhcc.local/leslie/mhccgov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01004.pdf	http://mhcc.maryland.gov/consumerinfo/longtermcare/nhfamilysatisfactionreports/NH01004.pdf

Statewide average

year	response rate	staff admin	care provided	food meals	autonomy rights	physical aspects	overall care	recommend
2010	57%	3.7	3.5	3.5	3.5	3.4	8.4	90%
2009	58%	3.7	3.5	3.5	3.5	3.4	8.3	90%
2008	59%	3.6	3.5	3.5	3.5	3.4	8.2	89%
2007	58%	3.5	3.4	3.5	3.1	3.3	8.2	88%

